APPENDIX A

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Pursuant to Sixth Circuit Rule 206

File Name: 06a0019p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTED, on behalf of themselves and a similarly situated class,
Plaintiffs-Appellees,

v.

EL PASO TENNESSEE PIPELINE CO.,
Defendant-Appellant (04-1821/2492),

CASE CORPORATION, now known as CNH AMERICA, LLC,
Defendant-Appellant (04-1182/1818).

Nos. 04-1182/1818/1821/2492

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 02-75164—Patrick J. Duggan, District Judge.

Argued: December 6, 2005

Decided and Filed: January 17, 2006

Before: MARTIN, COLE, and GILMAN, Circuit Judges.

COUNSEL

ARGUED: Bobby R. Burchfield, McDERMOTT, WILL & EMERY, Washington, D.C., Stephanie J. Goldstein, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, New York, New York, for Defendants. Roger J. McClow, KLIMIST, McKNIGHT, SALE, McCLOW & CANZANO, Southfield, Michigan, for Plaintiffs. **ON BRIEF:** Bobby R. Burchfield, Jason A. Levine, Douglas G. Edelschick, McDERMOTT,

WILL & EMERY, Washington, D.C., Stephanie J. Goldstein, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, New York, New York, Thomas G. Kienbaum, Noel D. Massie, William B. Forrest III, KIENBAUM, OPPERWALL, HARDY & PELTON, Birmingham, Michigan, Norman C. Ankers, HONIGMAN, MILLER, SCHWARTZ, AND COHN, Detroit, Michigan, for Defendants. Roger J. McClow, Samuel C. McKnight, KLIMIST, McKNIGHT, SALE, McCLOW & CANZANO, Southfield, Michigan, for Plaintiffs.

OPINION

BOYCE F. MARTIN, JR., Circuit Judge. The plaintiffs in these four consolidated appeals are retirees or surviving spouses of the J.I. Case Company or the Case Corporation, and they seek fully funded lifetime retiree health care benefits from the defendants. The district court found that the plaintiffs demonstrated a likelihood of success on the merits and entered a preliminary injunction requiring the continued payment of the health care benefits. In three of the consolidated appeals, the underlying issue is whether the retirement health care benefits vested for life. We conclude that the district court did not abuse its discretion in determining that the plaintiffs are likely to succeed on their claim that their health care benefits are fully vested for life. So concluding, we turn to the question presented in the fourth consolidated appeal, and hold that the district court correctly determined that the contract between El Paso and CNH America unambiguously allocates the full cost of those benefits to El Paso. We therefore AFFIRM the district court's judgment in all respects.

I.

In their complaint, the plaintiffs alleged two counts against the defendants: (1) breach of labor agreements in

violation of Section 301 of the Labor Management Relations Act, 29 U.S.C.§ 185,[1] by requiring the plaintiffs to contribute premiums to maintain their retiree or surviving spouse health care benefits, and (2) breach of fiduciary duties under the various labor agreements which constitute employee welfare plans within the meaning of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq*.

The defendants are El Paso Tennessee Pipeline Company and CNH America, LLC. JI Case, not a party to the dispute, was established in 1842 and became a wholly owned subsidiary of Tenneco (now El Paso) in 1970. JI Case remained a wholly owned subsidiary of Tenneco until 1994 when Tenneco underwent a reorganization and decided to spin off its own and JI Case's agriculture and construction business assets. Tenneco therefore formed a new corporation, Case Equipment Corporation, and pursuant to a Reorganization Agreement, transferred these assets to Case Equipment. Included was all of the JI Case business (defined as the farm and construction equipment business of Tenneco) except for Tenneco's JI Case stock, certain demand notes and subordinated debt, as well as the Retained Assets and Retained Liabilities. Case Equipment was then spun off on July 1, 1994, in an initial public offering of its shares. Case Equipment then changed its name to Case Corporation, then to Case, LLC, and is now known as CNH America.[2] In 1996, Tenneco merged with a subsidiary of El

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[1] Section 301(a) states that: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a).

[2] For ease of discussion, at times the opinion will refer to CNH America by its previous names.

Paso Natural Gas Company and is now known as El Paso Tennessee Pipeline Company.

The International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW) represented JI Case employees in collective bargaining. Over the years, UAW and JI Case negotiated a number of collective bargaining agreements (CBAs). UAW and JI Case also negotiated a series of Group Insurance Plans which addressed group insurance benefits for various categories of employees and former employees. The CBAs between UAW and JI Case from 1971 forward contain the following language in Section 4A with respect to the Group Insurance Plans: "The group insurance plan agreed to between the parties will run concurrently with this Agreement and is hereby made a part of this Agreement." In Section 4C the CBA states: "The pension plan agreed to between the parties will run concurrently with this Agreement and is hereby made part of this Agreement." In 1974, JI Case agreed to pay the full cost of health care benefits for retirees and eligible surviving spouses regardless of age. Under the section "Contribution for Coverage," the plan states that "the Company shall pay the full premium cost of the above coverages." The language of the Group Insurance Plans remained substantially unchanged through 1990.

Over the years, Metropolitan Life Insurance Company prepared benefit booklets describing insurance benefits provided under the Group Policy contracts between JI Case and Metropolitan. These booklets included language that "it is hoped that the Group Policies will be continued indefinitely through the years, but your employer necessarily reserves the right, subject to the applicable provisions of the Labor Agreement [CBAs], to terminate or change the Plan in the future."

The 1990 Agreement is the CBA under which the plaintiffs retired. The 1990 CBA was effective from June 2,

1990 through October 2, 1993. On November 5, 1993, however, JI Case and UAW entered into an Extension Agreement that extended the 1990 CBA through February 2, 1995. In Section 9 of the Extension Agreement, JI Case and UAW agreed to adopt, effective on October 3, 1993, a Letter of Agreement ("the FAS-106 Letter") that appears to cap JI Case's liability for certain health care benefits. The Letter states:

> This will confirm our understanding that the average per capita annual cost to the Company of providing medical and related benefits under the Case Group Benefit Plan to retired employees and surviving spouses of deceased employees shall not exceed $2,750 for Medicare eligible individuals and $8,500 for those individuals who are not eligible for Medicare. Notwithstanding the foregoing, no covered person shall be required to pay a portion of any excess amount prior to April 1, 1998.

The parties dispute the effect of this letter.[3]

On June 23, 1994, pursuant to Tenneco's transfer of its and Case's farm and construction equipment assets to Case Equipment, Tenneco, JI Case, and Case Equipment signed a number of agreements, including a Reorganization Agreement and an Employee Benefits and Compensation Allocation Agreement. As part of the agreement, Tenneco assumed "Retained Liabilities" and agreed to "pay, perform

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[3] The defendants contend that JI Case and UAW intended the Letter to be a "cost sharing agreement" between JI Case and its retirees whereby JI Case's obligations for retiree and surviving spouse health care benefits would be limited, effective April 1, 1998. The plaintiffs, on the other hand, contend that the parties intended the Letter to serve only as an accommodation for accounting purposes under FAS-106, whereby UAW agreed to allow JI Case to temporarily reduce the FAS-106 accounting figure that it reported on its financial records.

and discharge in due course all of the Retained Liabilities." The agreement defines "Retained Liabilities" as: "[T]he Case Liabilities for postretirement health and life insurance benefits (to the extent that Case is obligated on the Reorganization Date [June 23, 1994]) of retirees of the Case Business in the United States and current employees of the Case Business in the United States who retire on or before July 1, 1994 and their dependents as more fully described in the benefits agreement." Tenneco further agreed to indemnify Case Equipment "from and against any and all Liabilities, and any claims, demands and rights of the [Case Equipment] Indemnitees arising out of or due to . . . the failure or alleged failure of Tenneco or any Tenneco subsidiary to pay . . . any of the Retained Liabilities . . ."

Section 7.2.2 of the agreement further provides that Tenneco will "retain all liability with respect to postretirement health and life insurance benefits to the extent that Case is obligated on the Closing Date for United States employees retired prior to the Closing Date and their Dependants." Section 7.4 provides a limitation on Tenneco's responsibility:

> Tenneco shall not be liable for any postretirement health and life insurance benefit costs which result from any action of [Case Equipment] after the Closing Date which increases such benefits, except to the extent that such benefit increases are required by applicable law. To the extent that Tenneco is not liable for such benefits, [Case Equipment] shall be liable. Without limiting the generality of the foregoing, it is specifically provided that Tenneco shall not be liable for any increase in the cost of providing postretirement health and life insurance benefits that result from any agreement by [Case Equipment] to increase or otherwise modify the per

> capita annual cost limits set forth in [the FAS-106 Letter].

Case LLC assumed the existing CBAs between JI Case and the UAW.

After the Reorganization, Case LLC continued to operate the same farm and construction business that JI Case had under the same management, at the same locations, with the same equipment, with the same supervision, producing the same products, with the same employees, working under the same CBAs. Tenneco then began paying the full cost of the plaintiffs's health care benefits in 1994. In November 1996 Tenneco sent a letter to its retirees advising them of its impending merger with El Paso and advising those individuals who retired from JI Case that their health care benefits would be maintained by El Paso after the merger. On October 27, 1997, El Paso sent a letter to the plaintiffs informing them that they would be required to contribute $56 per month for health care coverage as of April 1, 1998. El Paso based this requirement on the FAS-106 Letter.

In the meantime and as part of negotiations for a new CBA, UAW asked Case LLC to pay the $56 per month contribution that El Paso sought from pre-IPO retirees for their health care coverage. Case LLC agreed to pay the contributions "as a show of good will toward the UAW," but insisted that it had no legal obligation to pay for the health care benefits. On October 1, 1998, Case LLC and the UAW entered into the Voluntary Employee Beneficiary Association Agreement whereby both Case LLC and UAW agreed "to make deposits of specified amounts in trust to be applied to defray partially the cost of medical benefits in excess of the Cap under El Paso's medical plan for Pre-IPO Retirees and Surviving Spouses . . ."

Case LLC then informed pre-IPO retirees and surviving spouses that it would pay their $56 per month premium through the end of 1998. In the summer of 2002, the funds

contributed by UAW and Case LLC were exhausted. UAW asked Case LLC and El Paso to make additional contributions to fund the above-cap health care insurance costs for pre-IPO retirees; they both refused. In August 2002, El Paso sent a letter to pre-IPO retirees informing them that they would need to contribute $290 per month in order to continue receiving retiree health care benefits. In December, El Paso sent another letter to the effect that premiums would increase to $501 per month as of January 2003. The plaintiffs filed this lawsuit on December 23, 2002. Subsequentl y, in October 2003, El Paso informed retirees that the monthly contribution would increase to $561 as of January 2004.

On December 31, 2003, the district court granted the plaintiffs's motion for a preliminary injunction, concluding that the plaintiffs were likely to succeed on their claim that CNH America was obligated to provide fully paid, lifetime health care benefits. *Yolton v. El Paso Tennessee Pipeline Co.*, 318 F. Supp. 2d 455 (E.D. Mich. 2003). The injunction was limited to those retirees who had retired before October 3, 1993 (the date of the FAS-106 Letter). *Id.* at 473. The district court further concluded that pursuant to the 1994 Reorganization, El Paso (as Tenneco's successor) had assumed CNH America's obligation to provide the benefits. *Id.* at 474-75. El Paso moved for reconsideration, arguing that it was premature to resolve the issue of the allocation of liability under the Reorganization Agreement. The district court granted El Paso's motion. On March 9, 2004, the district court concluded that CNH America, as the signatory to the CBAs (via Case LLC), had a direct obligation to the retirees. Nevertheless, on September 3, 2004, the district court granted summary judgment to CNH America on its cross-claim against El Paso for indemnification under the Reorganization Agreement for *all* of CNH America's pre-Reorganization retiree health care benefit liabilities. These appeals followed the district court's orders.

II.

The first issue for our consideration is whether the district court abused its discretion when it concluded that the plaintiffs were likely to succeed on their claim that their retirement health care benefits are vested. We conclude that the district court did not abuse its discretion because the CBAs demonstrate an intent to vest the benefits. Because we conclude that the district court did not abuse its discretion when issuing the injunction, we must determine whether the district court erred in granting CNH America summary judgment on its cross-claim that El Paso is liable for the full cost of the plaintiffs's health care benefits. We conclude that the contract was unambiguous, and the district court correctly granted summary judgment in favor of CNH America.

III.

A. The Standard of Review is Abuse of Discretion

This Court reviews a district court's grant of a preliminary injunction for an abuse of discretion. *Tucker v. City of Fairfield*, 398 F.3d 457, 461 (6th Cir. 2005). "A district court abuses its discretion when it relies on clearly erroneous findings of fact, improperly applies the law, or uses an erroneous legal standard." *Id.* This Court reviews the district court's conclusions of law *de novo* and its findings of fact for clear error. *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir. 1996). "Questions of contract interpretation are generally considered questions of law subject to *de novo* review." *Id.*

To determine whether to grant a preliminary injunction, a district court must consider: "(1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of an injunction upon the public interest." *Deja*

Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County, 274 F.3d 377, 400 (6th Cir. 2001). "None of these factors, standing alone, is a prerequisite to relief; rather, the court should balance them." *Golden*, 73 F.3d at 653.

B. The district court did not abuse its discretion in this case.

The district court considered each of the four factors listed above when issuing the preliminary injunction. The defendants primarily challenge the district court's findings on the first factor — that is, the court's determination that the plaintiffs are likely to succeed on the merits. The plaintiffs are likely to succeed on the merits if they can prove that they have a vested right to the insurance benefits they claim. "To prove this, the plaintiffs must show that the defendant and the union intended to include a right to lifetime benefits when they negotiated the CBAs at issue." *Golden*, 73 F.3d at 653.

A retiree health care insurance benefit plan is a welfare benefit plan under ERISA. *Maurer v. Joy Tech., Inc.*, 212 F.3d 907, 914 (6th Cir. 2000) (citing *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1005 (6th Cir. 1993)). Unlike pension plans, "[t]here is no statutory right to lifetime health benefits." *Golden*, 73 F.3d at 653.[4] If lifetime health care benefits exist for the plaintiffs, it is because the UAW and the defendants agreed to vest a welfare benefit plan. *Id.* at 654; *see also Boyer*, 986 F.2d at 1005. If a welfare benefit has not vested, "after a CBA expires, an employer generally

[4] ERISA provides for two types of employee benefit plans: pension plans and welfare benefit plans. 29 U.S.C. § 1002(1), (2)(A). Pension plans are subject to mandatory participation, vesting, and funding requirements. 29 U.S.C. § 1051. Welfare benefits are not subject to these requirements. *Id.* Retiree health insurance benefit plans are classified as welfare benefit plans under ERISA. 29 U.S.C. § 1002(1).

is free to modify or terminate any retiree medical benefits that the employer provided pursuant to that CBA." *Bittinger v. Tecumseh Prod. Co.*, 83 F. Supp. 2d 851, 857 (E.D. Mich. 1998) (quoting *Am. Fed'n of Grain Millers v. Int'l Multifoods*, 116 F.3d 976, 979 (2d Cir. 1997)). If a welfare benefit has vested, the employer's unilateral modification or reduction of those benefits constitutes a LMRA violation. *Maurer*, 212 F.3d at 914.

The district court applied this Court's decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476, 1479 (6th Cir. 1983), to determine whether the parties intended for the retiree health insurance benefits to vest. *Yolton*, 318 F. Supp. 2d at 465. *Yard-Man* recognized that parties to CBAs can agree to vest benefits that survive the termination of the agreement. *Yard-Man*, 716 F.2d at 1479. Whether the benefits vest depends upon the intent of the parties. *Golden*, 73 F.3d at 654. "Courts can find that rights have vested under a CBA even if the intent to vest has not been explicitly set out in the agreement." *Maurer v. Joy Technologies, Inc.*, 212 F.3d 907, 915 (6th Cir. 2000). In *Golden*, the Court clarified that in determining the intent of the parties to a CBA, "basic rules of contract interpretation apply." *Golden*, 73 F.3d at 654. Thus, *Yard-Man* makes clear that courts "should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent." *Yard-Man*, 716 F.2d at 1479. Moreover, courts "should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties." *Id.* When ambiguities exist, courts may look to other provisions of the document and other extrinsic evidence. *Id.* at 1480; *see also Golden*, 73 F.3d at 654.

Part of the *Yard-Man* decision has generated controversy. Examining the context of the CBA negotiations, the Court

wrote that "it is unlikely that [life and health insurance benefits], which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations." *Yard-Man*, 716 F.2d at 1482. Thus, "retiree benefits are in a sense 'status' benefits which, as such, carry with them an *inference* that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree." *Id.* (emphasis added). This inference has caused much consternation for employers despite the remainder of the Court's opinion:

> This is not to say that retiree insurance benefits are necessarily interminable by their nature. Nor does any federal labor policy . . . presumptively favor the finding of interminable rights to retiree insurance benefits when the collective bargaining agreement is silent. Rather, as part of the context from which the collective bargaining agreement arose, the nature of such benefits simply provides another inference of intent. *Standing alone, this factor would be insufficient to find an intent to create interminable benefits.* In the present case, however, this contextual factor buttresses *the already sufficient evidence of such intent* in the language of the agreement itself.

Id. (emphasis added). Later cases further clarified the inference. Shortly after *Yard-Man*, this Court stated that "there is no legal presumption based on the status of retired employees." *Int'l Union, United Auto. Workers v. Cadillac Malleable Iron Co.*, 728 F.2d 807, 808 (6th Cir. 1984). Moreover, "*Yard-Man* does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest. Rather, the *Yard-Man* inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the

intent of the parties from vague or ambiguous CBAs." *Golden*, 73 F.3d at 656.

Both El Paso and CNH America devote a great deal of energy to disputing the correctness of the *Yard-Man* inference. El Paso even suggests that this panel should overrule *Yard-Man*.[5] Aside from a panel's lack of authority to do so, these concerns are significantly overstated. El Paso and CNH America misinterpret the term "inference" and confuse it with a legal presumption. Under *Yard-Man* we may *infer* an intent to vest from the context and already sufficient evidence of such intent. Absent such other evidence, we do not start our analysis presuming anything. If *Yard-Man* required a *presumption*, the burden of rebutting that presumption would fall on the defendants. However, under *Yard-Man*, "[t]here is no legal presumption that benefits vest and that the burden of proof rests on plaintiffs." *Maurer*, 212 F.3d at 917. This Court has never inferred an intent to vest benefits in the absence of either explicit contractual language or extrinsic evidence indicating such an intent. Rather, the inference functions more to provide a contextual understanding about the nature of labor-management negotiations over retirement benefits. That is, because retirement health care benefits are not mandatory or required to be included in an agreement, and because they are "typically understood as a form of delayed compensation or reward for past services" it is unlikely that they would be "left to the contingencies of future negotiations." *Yard-Man*, 716 F.2d at 1481-82 (citations omitted). When other

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[5] The defendants also advance the argument that this Court already overruled *Yard-Man* in *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir. 1998) (en banc). Prior panels have already addressed and explicitly rejected this argument. *Maurer*, 212 F.3d at 917 (rejecting claim that *Sprague* overruled *Yard-Man* and further rejecting the claim that explicit vesting language is necessary for welfare benefits to vest).

contextual factors so indicate, *Yard-Man* simply provides another inference of intent. All that *Yard-Man* and subsequent cases instruct is that the Court should apply ordinary principles of contract interpretation. There is no need to revise, reconsider, or overrule *Yard-Man*.

Furthermore, there is no indication that the district court applied either a presumption or relied unnecessarily on the *Yard-Man* inference. Citing *Yard-Man*, the district court correctly stated that "courts must apply basic rules of contract interpretation to discern the intent of the parties." *Yolton*, 318 F. Supp. 2d at 465. The district court did mention the inference and noted that Sixth Circuit case law has not repudiated the *Yard-Man* language, but the court's analysis does not in any sense *rely* on an inference. *Id.* at 465-68. Instead, the district court interpreted the language of the agreement and found evidence that the defendants intended to confer lifetime benefits upon the plaintiffs. *Id.* at 466. Of particular significance to the district court was language in the Group Insurance Plan that tied benefits to the pension plans — that is, the Group Insurance Plan provided that employees retiring under the pension plan are eligible for the lifetime health care insurance. *Id.* Because the pension plan is a lifetime plan and the health insurance benefits are tied to the pension plan, the district court found that the health insurance benefits were vested and intended to be lifetime benefits. *Id.* at 466-67. This language is similar to *Golden*, where the district court's key finding was the provisions in each of the CBAs that tied retiree benefits and surviving spouse eligibility for health insurance coverage to eligibility for vested pension benefits. "Since retirees are eligible to receive pension benefits for life, the court found that the parties intended that the company provide lifetime health benefits as well." *Golden*, 73 F.3d at 656.

The defendants counter this finding by pointing to the durational clause in the CBA, which states in section 4A that

the insurance plan "will run concurrently with [the CBA] and is hereby made part of this Agreement." The defendants argue that this is clear and explicit language that demonstrates that the health insurance benefits were not intended to vest and were only to last as long as the CBA. Thus, every time a CBA expires, the company would be free to modify benefits until another CBA is agreed to. Stated another way, retiree's health insurance coverage is subject to change every few years based on new bargaining agreements.

The district court did not abuse its discretion in rejecting the defendants's arguments for two reasons. First, as the district court found, "a number of courts have held that such general durational provisions only refer to the length of the [CBAs] and not the period of time contemplated for retiree benefits." *Yolton*, 318 F. Supp. 2d at 467 (citing *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410 (E.D. Mich. 1994)). Absent specific durational language referring to retiree benefits themselves, courts have held that the general durational language says nothing about those retiree benefits. *Id.; see also Yard-Man*, 716 F.2d at 1482; *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261, 1265 (W.D. Mich. 1990), *aff'd* 948 F.2d 1290 (6th Cir. 1991) ("the existence of a general durational clause which provide[s] that the collective bargaining agreement should remain in effect until a certain date d[oes] not demonstrate an intent that all benefits described in the agreement also terminate[] on that date.").

That reasoning as applied to the agreements before us means that the concurrent language does nothing to those employees who have already retired under the plan. The durational language only affects *future* retirees — that is, someone who retired after the expiration of a particular CBA would not be entitled to the previous benefits, but is rather entitled only to those benefits newly negotiated under a new CBA. Thus, the retirement package available to someone

contemplating retirement will change with the expiration and adoption of CBAs, but someone already retired under a particular CBA continues to receive the benefits provided therein despite the expiration of the agreement itself.[6]

Second, section 4C of the CBA states that "The pension plan agreed to between the parties will run concurrently with this agreement and is hereby made part of this Agreement." The plaintiffs point to this language as strongly supporting their argument that the retirement benefits are vested. This is because pension benefits are vested benefits. There is no suggestion that a retiree's pension plan is subject to change under each new CBA. The plaintiffs assert, therefore, that because pension plans are vested benefits and because the CBA uses the same durational language for pension plans that it uses for the health care benefits, the health care benefits also must be vested benefits. They argue that the agreements would not use the same language in sections 4A and 4C if it had different meanings.[7] This argument further bolsters the interpretation noted above that the expiration of a CBA affects only future retirees in the context of benefits. Reviewing "each provision in question as part of the integrated whole," the use of similar language in sections 4A

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[6] This is perhaps where the *Yard-Man* inference makes the most sense. Retirees, who have left their bargaining unit, and can no longer rely on their union to maintain their benefits, are not likely to leave their benefits alterable based on the changing whims and relative bargaining power of their former union and employer. *See Golden*, 845 F. Supp. at 413.

[7] The district court in *Golden* likewise rejected the defendant's argument regarding the durational clauses because the same language was used regarding pensions and health insurance benefits. The district court stated that "[g]iven the defendant's logic, because its pension plan was incorporated into the collective bargaining agreement, its obligation to provide pensions ended with the expiration of the agreement." *Golden*, 845 F. Supp. at 415 n.1.

and 4C provides substantial support for the plaintiffs's position. *Yard-Man*, 716 F.2d at 1479.[8]

The district court also cited specific durational limits on other types of benefits in the Group Insurance Plan. The *Yard-Man* court held that "the inclusion of specific durational limitations in other provisions . . . suggests that retiree benefits, not so specifically limited, were intended to survive . . ." *Yard-Man*, 716 F.2d at 1481-82; *see also Kelsey-Hayes*, 954 F. Supp. at 1187. In the plans at issue here, the district court cited the specific durational limitations for workers on lay-off and on maternity leave. *Yolton*, 318 F. Supp. 2d at 466-67.

In response to the defendants's arguments, the district court distinguished the language in this case from the plans at issue in *UAW v. Cleveland Gear Corp.*, 1983 WL 2174 (N.D. Ohio 1983), and *Bittinger v. Tecumseh Products Co.*, 83 F. Supp. 2d 851 (E.D. Mich. 1998), upon which the defendants's rely.[9] In *Cleveland Gear*, the CBA between the parties stated that: "The Insurance Agreement and Insurance Plan, as revised, shall be effective as provided therein and shall remain in full force and effect during the term of this collective bargaining agreement." *Cleveland Gear*, 1983 WL 2174 at *2. The court concluded that the parties did not intend the benefits to vest and there was no language

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[8] The district court in *Golden* characterized *Yard-Man* as "recogniz[ing] that employees are aware when they accept retiree benefits in exchange for lower wages, that they cannot rely on their union to maintain those benefits once they have retired and left their bargaining unit. Thus, 'finding an intent to create interminable rights to retiree insurance benefits in the absence of explicit language, is not, in any discernible way, inconsistent with federal labor law.'" *Golden*, 845 F. Supp. at 413 (quoting *Yard-Man*, 716 F.2d at 1482).

[9] Of note, *Bittinger* was decided by the same district court as the instant case.

indicating that the benefits were lifetime benefits. *Id.* In the instant case, the district court acknowledged the *Cleveland Gear* conclusion, but distinguished it. In *Cleveland Gear*, in addition to the general durational language in the CBA, the insurance agreement *itself* contained similar limiting language. The insurance plan stated that it remained in effect "until discontinued or superseded either in whole or in the termination or suspension of such Collective Bargaining Agreement." *Cleveland Gear*, at *3. Moreover, the district court in the instant case noted that the agreements in *Cleveland Gear* did not contain language that tied health insurance benefits to pension benefits as is the case here.

Likewise, the agreements in *Bittinger* were devoid of any language that tied health insurance benefits to pension benefits. The defendants rely on *Bittinger* principally because the Summary Plan Descriptions[10] in *Bittinger* reserved to the company the "absolute right, through the collective bargaining process, to amend, modify, or discontinue any or all of the benefits described in the [labor agreement] or the [health care plan] . . ." *Bittinger*, 83 F. Supp. 2d at 858. In the plans at issue here, from 1974 to 1980 the Summary Plan Descriptions also contain some reservation of rights via the following language: "It is hoped that the Group Policies will be continued indefinitely through the years, but your employer necessarily reserves the right, subject to the applicable provisions of the Labor Agreement between the Union and the Company, to terminate or change the Plan in the future." *Yolton*, 318 F.

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[10] A summary plan description is a publication explaining the benefits of a particular welfare benefit plan and ERISA requires employers to distribute the descriptions to employees. 29 U.S.C. § 1022. Furthermore, this Court has held that "statements in a summary plan are binding and if the statements conflict with those in the plan itself, the summary shall govern." *Edwards v. State Farm Mut. Auto Ins. Co.*, 851 F.2d 134, 136 (6th Cir. 1988).

Supp. 2d at 468. The district court rejected the defendants's arguments that this language permitted the modification of retirement benefits by finding that the "right to modify the Group Insurance Plans is expressly limited to the terms of the [CBAs]." *Id.* Because the district court found that the CBA creates the vested lifetime benefits, the court further concluded that this language does not reserve to the defendants the right to modify those benefits. *Id.*

Regarding the Summary Plan Descriptions from the post-1980 agreements, the district court noted that they no longer included the reservation language, but rather a "Cessation of Benefits" provision stating that coverage will cease if the plan is cancelled in whole or in part. *Id.* The Cessation of Benefits refers to "the Sections of this booklet entitled 'Retirement' and 'Termination of Coverage,'" where there is no "Cessation of Benefits" provision. *Id.* "Rather this section, like the Group Insurance Plan, only ties the continuation of retirement benefits to the retiree's or surviving spouse's eligibility for pension benefits: 'Employees who retire under the J.I. Case Pension Plan for Hourly Paid Employees, or their surviving spouses eligible to receive a spouse's pension under the provisions of that plan, will be eligible for the benefits described in this section.'" *Id.* Further, this section provides that: "Except where noted, the benefits and maximums under these *continued* coverages *will be the same as those that were in effect on the day preceding your retirement.*" *Id.* (emphasis added).[11]

Finally, while the plain language of the CBAs requires us to conclude that the district court did not abuse its discretion by issuing the injunction, we also note that like the *Golden*

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[11] The section also provides that "The cost of this coverage is fully paid by the Employer." *Yolton*, 318 F. Supp. 2d at 468.

case, "[d]efendant's conduct also indicates that plaintiffs'[s] benefits were vested." *Golden*, 845 F. Supp. at 415. The district court identified substantial evidence indicating an understanding that the health insurance benefits were lifetime benefits. This evidence includes statements from Case benefits employees that they were told and in turn told retiring employees "that their medical insurance benefits would continue unchanged for their lifetime . . ." *Yolton*, 318 F. Supp. 2d at 469. A letter from Case's Director of Benefits & Practices sent to retirees in 1971 stated that the Company would fully cover benefits and that benefits would be in effect for life. *Id.* Documents related to various plant shutdown retirement agreements reflect that health insurance benefits "continu[ed] unchanged" "[f]or lifetime." *Id.* Medical insurance cards issued to retirees from Case's Industrial Relations Department in Terre Haute, Indiana contain the words "Lifetime" or "Lifetime Coverage." *Id.* The plaintiffs also presented benefits information issued to employees upon retirement that stated that the retiree and his wife were entitled to full health insurance coverage and that if the retiree predeceased his wife, her coverage "would continue as before" and would only change if she remarried. *Id.* at 469-70. Further, under a section entitled "Spouse's Benefits," the summary provided to the employee states that "In the event that you should die before your spouse and a spouse's option was spplied [sic] for, she will receive 55% of your pension for her lifetime along with the insurance which was mentioned previously." *Id.* at 470. The plaintiffs further offered affidavits of numerous other retirees and surviving spouses who were told by Case benefits representatives that they would receive post-retirement lifetime health insurance coverage fully paid for by the company. *Id.* Some of the affidavits include the accompanying documentation promising fully funded health insurance for life. *Id.*

On the other side, the defendants presented the testimony of Case's chief union negotiator and the former Director of Employee Benefits who stated that the company understood benefits to last only as long as the CBAs were in effect and that benefits were not fixed. *Id.* at 470. The district court rejected this testimony finding that it was not entitled "to considerable weight" because the union negotiator is still employed by Case and the former director receives $20,000 per month in consulting fees from the company. *Id.* at 471.

The most relevant extrinsic evidence the defendants present is evidence that during the negotiations that led to the FAS-106 Letter, UAW asked to add "lifetime" language to the Letter which was rejected by the company. *Id.* The defendants argue that this demonstrates that the parties understood that the benefits were not vested. The district court rejected this argument, finding that it "does not necessarily mean that the union's representatives believed that the earlier agreements did not provide vested health care benefits. The representatives may have been attempting to more clearly state what they believed earlier agreements provided, particularly where the 'agreement' at issue established other limitations on those benefits." *Id.* As the injunction issued by the district court is a preliminary injunction, the defendants may continue to press their arguments below, but we do not find them sufficient to demonstrate that the district court abused its discretion in this case.

For all of the reasons discussed, the district court did not abuse its discretion by concluding that the plaintiffs were likely to succeed on the merits of their claim that they were entitled to fully funded lifetime health care benefits.

None of the parties's briefs contest the additional inquiries in the preliminary injunction context, and we find the district court's conclusions sound. The district court found that the plaintiffs would suffer irreparable harm

without the injunction. *Id.* at 471-72. The court pointed to the limited and fixed incomes of the retirees, resulting in an inability to meet the expense of the premiums or resulting in retirees being unable to afford prescriptions or doctor visits. *Id.* Additionally, the court noted that to receive any health insurance benefits, El Paso was requiring the plaintiffs to contribute $501 *per month*. Accordingly, "the Court can surmise that the putative class members overall cannot afford to contribute such an amount until this case is resolved. Unable to afford the $501 premium, Plaintiffs will lose their health insurance, will not be able to pay for necessary prescription medications, and will not receive all of the medical care they need. Reimbursing Plaintiffs for their contributions at the end of the case, therefore, will not afford them relief." *Id.* at 472.

The district court also found that while the injunction will place a substantial expense on the defendants, this factor did not weigh heavily against the injunction. *Id.* at 473. According to the district court, "Defendants have paid the full costs of health care benefits for retirees and their surviving spouses for years prior to August 2002, and in this Court's opinion, the financial impact on Defendants being required to continue to pay these benefits is far less than the financial burden which would be placed on Plaintiffs if their request for a preliminary injunction is denied." *Id.* Finally, the district court found that the injunction supports the public interest in enforcing CBAs and preventing ERISA and LMRA violations. *Id.*

We therefore conclude that the district court did not abuse its discretion by issuing the injunction. Prior cases of this Court have highlighted factors indicating an intent to vest benefits that were present in this case. Additionally, we believe that the district court correctly interpreted the plain language of the CBAs and Group Insurance Plans as well as the agreement as a whole. The language tying health care

benefits to pension benefits and the context of the bargaining demonstrate an intent to provide lifetime benefits. Furthermore, we do not believe that the general durational language in the CBA limits the duration of the health care benefits themselves, but rather merely provides a limitation on the agreement itself. The use of identical language in the CBAs referring to pension benefits and health care benefits provides strong additional support that the benefits are tied together and that they are lifetime benefits. Even if the agreements were ambiguous, the extrinsic evidence cited by the district court would support its finding and would not lead to the conclusion that the district court abused its discretion in issuing the injunction.

C. Whether El Paso or CNH America is Liable for the Health Care Benefits

The remaining dispute is between El Paso and CNH America. Each contends that the other is liable for the plaintiffs's health insurance benefits above the apparent cap imposed by the FAS-106 Letter. CNH America contends that El Paso, as Tenneco's successor, is solely responsible for all of the plaintiffs's health care benefits. El Paso argues that in the 1994 Reorganization Agreement it assumed liability for pre-IPO retiree health care benefits subject to the negotiated cap set forth in the FAS-106 Letter; thus, according to El Paso, CNH America is liable for costs in excess of the cap.

Initially, in its opinion issuing the preliminary injunction, the district court found that El Paso is primarily liable for the entire health care costs for pre-IPO retirees and their surviving spouses. *Yolton*, 318 F. Supp. 2d at 474-75. The district court reasoned that the Reorganization Agreement's "Retained Liabilities" section provided that Tenneco assumed CNH America's liabilities for postretirement health insurance benefits for pre-IPO retirees and their dependents. Nevertheless, the court found that CNH America "has not

been released from its liability to provide fully funded, lifetime health insurance benefits to its retirees and their surviving spouses." *Id.* at 474. Notwithstanding Tenneco's assumption of the liabilities, the court held that CNH America remains secondarily responsible to the plaintiffs for the cost of the benefits. In sum, the district court concluded "that El Paso is liable for the full costs of the pre-IPO retirees' and surviving spouses' health insurance benefits. The Court may subsequently conclude that [CNH America] is also liable for these costs." *Id.* at 475.

Following the district court's opinion, El Paso filed a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b). In ruling on the motion in an opinion issued on March 8, 2004, the district court noted that its original conclusion that El Paso was primarily liable was based on the 1994 Reorganization Agreement. In its motion for reconsideration, El Paso argued that it was premature to resolve the issue of whether El Paso was required to indemnify CNH America for the health insurance benefits without providing El Paso the opportunity to address the issue and without fully resolving CNH America's liability for the costs as signatory to the relevant CBAs.

The court concluded "that El Paso is entitled to relief, as the Court erred in overlooking the fact that, as the signatory to the CBAs, [CNH America] retained liability for Plaintiffs'[s] health care costs despite El Paso's subsequent assumption of those liabilities in the Reorganization Agreement and Benefits Agreement." D. Ct. Op. of March 8, 2004 at 3. To reach this conclusion, the district court needed to address whether CNH America is a party to the CBAs — in essence, whether CNH America is the alter ego of JI Case.

CNH America's position is that it did not exist before July 1, 1994 when Case LLC it was created by JI Case executives; having not existed until this time, CNH America

claims, it could not possibly have been a party to the CBAs signed before this date. CNH America further asserts that it is not the alter ego or successor of JI Case. The district court disagreed and found that CNH America is the alter ego or mere continuance of JI Case and therefore assumed the CBAs and their liabilities.

As the district court correctly noted, the Supreme Court has held that a successor corporation generally is not liable for its predecessors liabilities unless expressly assumed. *See e.g., NLRB v. Burns Int's Sec. Servs.*, 406 U.S. 272, 279, 286-88 (1972). This rule is not absolute, however, as the Court has held that a CBA might remain in force "in a variety of circumstances involving a merger, stock acquisition, reorganization or assets purchase." *Id.* at 291. The Supreme Court has also held that when there is a "mere technical change in the structure or identity of the [old] employing entity, frequently to avoid the effect of the labor laws, without any substantial change in its ownership or management . . . the courts have little difficulty holding that the successor is in reality the same employer and is subject to all the legal and contractual obligations of the predecessor." *Howard Johnson Co. v. Detroit Local Joint Executive Bd.*, 417 U.S. 210, 259 n.5 (1974) (citing *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942)).

This Court has applied these principles in several relevant cases. To start, "[w]hether a company or individual is responsible for the financial obligations of another company or individuals is a question of federal law when it arises in the context of a federal labor dispute. Although state law cases may provide guidance in fashioning the content of federal law, they are not binding and thus do not control" the analysis. *NLRB v. Fullerton Transfer & Storage Limited, Inc.*, 910 F.2d 331, 335 (6th Cir. 1990). This Court recognized, however, that federal law, like state law, generally recognizes the concept of limited liability. As the

Supreme Court has stated, "[t]he insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 402-03 (1960).

Fullerton Transfer, the case upon which CNH America relies, asked "which doctrine referred to as an 'alter ego doctrine' applies to this case." *Id.* at 366. "The alter ego doctrine was developed to prevent employers from evading obligations under the Act merely by changing or altering their corporate form." *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir. 1986). Quite correctly, the Court recognized that the term alter ego "has accumulated a great deal of baggage in the context of labor disputes." *Fullerton Transfer*, 910 F.2d at 366. The doctrine is most commonly used in "labor cases to bind a new employer that continues the operations of an old employer in those cases where the new employer is 'merely a disguised continuance of the old employer.'"[12] *Id.* (quoting *Southport Petroleum, Co. v. NLRB*, 315 U.S. 100, 106 (1942)); *see also Howard Johnson Co.*, 417 U.S. 249 (1974). To determine alter ego status in this situation, courts ask "whether the two enterprises have substantially identical management, business, purpose, operation, equipment, customers, supervision and ownership." *Id.* (quoting *Nelson Electric v. NLRB*, 638 F.2d 965, 968 (6th Cir. 1981)); *see also NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir. 1986).[13] The

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[12] The Court also noted that "[i]ncreasingly, the term also is applied to so-called double-breasted operations to determine whether two or more coexisting employers performing the same work are in fact one business, separated only in form." *Id.* at 336.

[13] The Court mentioned that "[t]he successorship doctrine is often confused with the alter ego doctrine. The successorship doctrine is used to determine whether a new employer has an obligation to bargain when there is a bona fide sale of the employing company. A bona fide sale is

Court described this as a "more relaxed, less exacting" application of the alter ego doctrine "[i]n order to effectuate federal labor policies." *Id.* Determination of alter ego status is a question of fact to be reversed only if clearly erroneous. *Allcoast Transfer*, 780 F.2d at 579 (citing *Southport Petroleum*, 315 U.S. at 106). In an alter ego analysis, "[n]o factor is controlling and all need not be present." *Tanaka Construction, Inc. v. NLRB*, 675 F.2d 1029, 1033 (9th Cir. 1982). The analysis is "flexible" and "no one element should become a prerequisite to imposition of alter ego status; rather, all the relevant factors must be considered together." *Allcoast Transfer*, 780 F.2d at 582.[14]

In *Fullerton Transfer*, however, the Court declined to apply the more relaxed alter ego doctrine because it found that the facts before it did not present a case where the alleged alter egos are "engaged in the same business as the original company . . . Rather, they are, respectively, a corporation engaged in a different business and stockholders and officers of another corporation." *Id.* at 337. Consequently, the Court determined that the rationales justifying application of the relaxed standard were absent. *Id.*

The facts here, however, indicate that the more relaxed standard is appropriate. CNH America argues otherwise; particularly, CNH America argues that the so-called relaxed doctrine applies only to situations where there is evidence of an intent to avoid labor obligations. It points to *Fullerton*

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found when there is any substantial change in ownership or management." *Id.* at 336 n. 6 (citation and quotation marks omitted).

[14] Moreover, even when a reorganization is supported by legitimate reasons, the employer may be prevented from avoiding its prior labor obligations. *Allcoast Transfer*, 780 F.2d at 582.

Transfer in support of its claim, but the language of *Fullerton Transfer* is not helpful. All that *Fullerton Transfer* stands for is the conclusion that the relaxed standard was not appropriate for the particular facts of that case.

Furthermore, post-*Fullerton Transfer* cases repudiate CNH America's claim. *See e.g.*, *Wilson v. Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO*, 83 F.3d 747 (6th Cir. 1996). In *Wilson*, the Court rejected the defendants's insistence that the alter ego doctrine "applies only to situations in which a change in the corporate form allows an employer to evade collective bargaining obligations, and that common ownership and evidence of an intent to avoid labor agreements are essential to an alter ego claim." *Id.* at 758-59. CNH America nevertheless insists that the district court erred by making an alter ego finding without evidence of an intent to evade labor obligations. We disagree. This Court, even in light of the language of *Fullerton Transfer*, has made clear that "common ownership or an intent to evade federal labor law obligations are not necessary prerequisites to a finding of alter ego status." *Id.* at 759. We need not, therefore, look for evidence of CNH America's intent to evade any labor obligations in determining whether it remains liable under the CBAs as the alter ego to JI Case. Rather, "the essential inquiry under an alter ego analysis is 'whether there was a *bona fide* discontinuance and a true change of ownership . . . or merely a disguised continuance of the old employer." *Allcoast Transfer*, 780 F.2d at 579 (quoting *Southport Petroleum*, 315 U.S. at 106).

We conclude that the district court applied the appropriate standard. The court asked "whether the two enterprises have substantially identical management, business purpose, operation equipment, customers, supervision and ownership." D. Ct. Op. of May 8, 2004 (citing *Allcoast Transfer*, 780 F.2d at 579 (citations

omitted)). JI Case and UAW were the parties to the CBAs. In 1994, Tenneco divested itself of its agriculture and construction assets by creating Case Equipment Corporation (which eventually became Case LLC and then CNH America). Upon the creation of the new corporation, Tenneco, JI Case, and Case Equipment entered into the Reorganization and Benefits Agreement whereby Tenneco and JI Case's assets were transferred to Case Equipment. Immediately following the reorganization, Case Equipment conducted an IPO and changed its name to Case Corporation and in September 2002 to Case LLC and later to CNH America.

Other factors indicate that CNH America is, for purposes of this case, the alter ego of JI Case. The Reorganization Agreement was signed for Case Equipment by Jean Pierre Rosso as its President and CEO. D. Ct. Op. Of May 8, 2004 at 6. At the time, Mr. Rosso was also the president and CEO of JI Case. *Id.* Prior to the Reorganization, Mr. Rosso, as the president and CEO of JI Case, sent a letter to retirees announcing that "[t]he leadership of Case and Tenneco have announced an action that, when completed, *will make Case* a publicly traded company." *Id.* The Reorganization Agreement was signed for JI Case by Theodore R. French, its Senior Vice President, CFO, and Treasurer. *Id.* at 6-7. Mr. French then held the same position with Case Equipment and in fact signed the Benefits Agreement as Senior Vice President, CFO, and Treasurer of Case Equipment *and* JI Case. *Id.*

A few days after the Reorganization Agreement was executed, JI Case executed a Certificate of Amendment, effective July 1, 1994 at 12:01 a.m., changing its name to Tenneco Equipment Corporation. *Id.* at 7. Effective at 12:02 a.m., Case Equipment changed its name to Case Corporation. *Id.* "The same individual, acting in the same

capacity for the new and old Case Corporations, executed both certificates." *Id.*

The district court also found that those individuals who were officers of JI Case prior to 12:01 a.m. on July 1, 1994, were the same individuals named as officers of Case Corporation at 12:02 a.m. *Id.* The new Case Corporation (Case LLC and then CNH America) operated under the same name as JI Case in the same manufacturing facilities with the same officers, employees, and business. *Id.* The new Case Corporation continued to correspond with retirees of JI Case using the same JI Case letterhead previously used by the old corporation. *Id.* at 7-8. "The letters from the new Case Corporation were signed by the same employees, working at the same locations, and in the same positions as the letters from the old Case Corporation." *Id.* at 8.

The Benefits Agreement included a provision that, except as otherwise specifically stated within the agreement, CNH America assumed and agreed to pay "all employment, compensation and benefit liabilities, whether arising prior to or after [the date of the agreement], with respect to all employees and former employees of [each subsidiary of Tenneco that assigned assets used in the farm and construction business to Case Corporation]." *Id.* Furthermore, CNH America assumed all CBAs covering employees of the farm and construction equipment business of JI Case, including the 1990 CBA. *Id.*

Based on the above factors, the district court concluded that the plaintiffs were likely to establish that CNH America is the alter ego of JI Case and therefore retained JI Case's labor law obligations. *Id.* The court further concluded, however, that the plaintiffs were *not* likely to succeed in their claim against El Paso regarding the labor law obligations because Tenneco was never a party to any CBAs. Thus, the district court concluded that the plaintiffs "will not likely succeed in establishing that El Paso is obligated *under those*

agreements to pay the costs of Plaintiffs'[s] health insurance benefits." *Id.* at 9 (emphasis in original) (citing *Serv., Hosp., Nursing Home & Pub. Employees Union v. Commercial Property Servs., Inc.*, 755 F.2d 499, 503 (6th Cir. 1985) (concluding that non-signatory to a CBA who is neither a successor or alter ego of signatory to the CBA cannot be bound by the provisions of the agreement)).

Finally, the district court noted that it may ultimately be correct in its initial conclusion that El Paso assumed CNH America's obligations to provide the benefits in the Reorganization Agreement, but noted that the *plaintiffs* do not seek relief based upon the Reorganization Agreement. Instead, El Paso's liability arises only as a result of CNH America's *cross-claim* against El Paso for breach of those agreements. Therefore, the court concluded it was premature to adjudicate that claim when addressing the plaintiffs's motion for a preliminary injunction. We agree with the district court's approach and affirm its judgment.

IV.

No. 04-2492: CNH America's Cross Claim Against El Paso

A. Additional Background

The remaining issue is CNH America's cross-claim against El Paso. This claim requires the Court to determine who will pay for the benefits should the plaintiffs succeed on their claim. To start, we turn to yet another opinion from the district court. On September 3, 2004, the district court granted CNH America summary judgment on its cross-claim against El Paso. The district court found that pursuant to the liability and indemnification provisions of the Reorganization and Benefits Agreement, El Paso had indemnified CNH America against *all* pre-Reorganization obligations CNH America had for retiree benefits. This

included liabilities above the alleged cap agreed to in the FAS-106 Letter.

To recap, on October 3, 1993, as part of the Extension Agreement, JI Case and the UAW agreed to adopt the FAS-106 Letter of Agreement. The letter states:

> This will confirm our understanding that the average per capita annual cost to the Company of providing medical and related benefits under the Case Group Benefit Plan to retired employees and surviving spouses of deceased employees shall not exceed $2,750 for Medicare eligible individuals and $8,500 for those individuals who are not eligible for Medicare. Notwithstanding the foregoing, no covered person shall be required to pay a portion of any excess amount prior to April 1, 1998.

When issuing the preliminary injunction discussed above, the district court found that this Letter had no effect on those retiring before its adoption (because those benefits vested) and therefore limited the scope of the preliminary injunction to those retiring before the date of the Letter.

During the Reorganization in 1994, additional agreements were signed allocating assets and liabilities of the various corporate entities. Section 3.02(c) of the Reorganization Agreement describes certain liabilities assumed by Tenneco for the pre-IPO retires:

> Except as set forth in the Benefits Agreement or the Tax Sharing Agreement, Tenneco or a Tenneco Subsidiary, as appropriate, (i) shall assume the Retained Liabilities effective as of the Reorganization Date and (ii) shall thereafter pay, perform and discharge in due course all of the Retained Liabilities.

The Reorganization Agreement then defines "Retained Liabilities" as:

> (ii) the Case Liabilities for postretirement health and life insurance benefits (to the extent that Case is obligated on the Reorganization Date) of retirees of the Case Business in the United States and current employees of the Case Business in the United States who retire on or before July 1, 1994 and their dependents as more fully described in the [Allocation] Agreement.

CNH America agreed to assume all other Case liabilities "other than the Retained Liabilities." In addition to the language in the Reorganization Agreement, the Allocation (or Benefits) Agreement has additional language providing guidance. Section 7.2.2 of the Allocation Agreement states:

> Subject to Section 7.4,[15] Tenneco shall retain all liability with respect to postretirement health and life insurance benefits to the extent that Case is obligated on the Closing Date [i.e., the date of the agreement] for United State Employees retired prior to the Closing Date and their dependents.

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[15] Section 7.4 provides the following limitation on the liabilities Tenneco assumed.

> Tenneco shall not be liable for any postretirement health and life insurance benefit costs which result from any action of [Case LLC] after the Closing Date which increases such benefits, except to the extent that such benefit increases are required by applicable law. To the extent that Tenneco is not liable for such benefits, [Case LLC] shall be liable. Without limiting the generality fo the foregoing, it is specifically provided that Tenneco shall not be liable for any increase in the cost of providing postretirement health and life insurance benefits that result from any agreement by [Case LLC] to increase or otherwise modify the per capita annual cost limits set forth in the October 3, 1993 agreement between Case and the UAW regarding "FAS-106 out-year Cost Limiters."

Article V of the Reorganization Agreement further provides indemnification provisions requiring CNH America and Tenneco to defend and indemnify one another for failing to perform their obligations under the agreements. Section 5.01 requires Tenneco to

> indemnify, defend and hold harmless [Case LLC] . . . from and against any and all Liabilities, and any claims, demands and rights . . . arising out of or due to . . . the failure or alleged failure of Tenneco or any Tenneco Subsidiary to pay, perform or otherwise discharge in due course any of the Retained Liabilities . . . and . . . to perform its obligations under this Agreement or any of the Ancillary Agreements.

Section 5.02 required the same of CNH America with respect to its obligations.

The district court reviewed the agreements pursuant to Delaware law as provided for in the agreements themselves. Under Delaware law, the terms of a contract "will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectation inconsistent with the contract language." *Eagle Indus., Inc. v. De Vilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997) (citation omitted). Thus, in the absence of any ambiguity, the express terms of the contract control. *Hafi v. Dart Group Corp.*, 841 F. Supp. 549, 564 (D. Del. 1993) (citing *Harry H. Rosin Co. v. Eksterowicz*, 73 A.2d 648, 651 (Del. Super. Ct. 1950), and *Myers v. Myers*, 408 A.2d 279, 280 (Del. 1979)). Extrinsic evidence may not be used if the terms of a contract are unambiguous. *Eagle Indus.*, 702 A.2d at 1232 (citations omitted).

The district court further noted that contract interpretation is a question of law. *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1170 (Del. 1990). If a contract is unambiguous, therefore, summary judgment is

appropriate because extrinsic evidence is neither relevant nor admissible to ascertain the parties's intent. *SBC Interactive, Inc. v. Corporate Media Partners*, 714 A.2d 758, 761 (Del. 1998). Finding the contract unambiguous, the district court concluded "that since Tenneco (and thereby El Paso) assumed '*all* liability with respect to postretirement health and life insurance benefits to the extent that Case [was] obligated on the Closing Date . . .' and since that liability actually included costs above the cap at least for individuals retiring prior to the effective date of the FAS-106 Letter, El Paso is liable for the above-cap costs of Plaintiffs'[s] health insurance benefits."

CNH America argued that Tenneco's liability for pre-IPO retiree health benefits is unambiguously established by Section 3.02(c) of the Reorganization Agreement and Section 7.2.2 of the Allocation Agreement. El Paso argued that Tenneco assumed only below-cap costs of those benefits because Section 3.02(c) and Section 7.2.2 limit liability "to the extent that Case is obligated on the Reorganization Date." El Paso argued that the parties's agreements were premised on the belief that benefits were capped as of that date, and therefore, Tenneco assumed only the below-cap costs. El Paso supported its argument with extrinsic evidence. The district court rejected the extrinsic evidence, concluding that:

> This extrinsic evidence is not persuasive. It is simply statements made by parties *after* the Reorganization Agreement was entered into and reaffirms the parties' belief that retiree health benefit costs were capped. There is no dispute that at the time of the agreement El Paso (or Tenneco) and Case LLC believed that the costs were capped. This extrinsic evidence does not persuade the Court that it was the intent of the parties that Case LLC retained the liability for the above-cap costs.

The district court noted that the problem in this case arises because of the FAS-106 Letter. The court concluded already, however, that the Letter does not cap the benefits of pre-Letter retirees and therefore, CNH America's liability was not capped with respect to those retirees. It therefore follows, according to the district court, that El Paso assumed these above-cap liabilities.

The district court found additional support for its conclusion in other parts of the parties's agreements. The Reorganization Agreement's definition of "Liabilities" includes "foreseen or unforeseen" liabilities as well as "known or unknown" liabilities arising pursuant to, among other things, an "Action," "before any court." Therefore, the district court stated:

> In summary, the Court concludes that the terms of the Reorganization Agreement and Allocation Agreement unambiguously reflect the parties'[s] intent that Tenneco would assume all of Case's liability for postretirement health insurance benefits to the extent Case was obligated for those benefits on June 23, 1994, including those which were unforeseen and/or unknown at the time. The Court has preliminarily determined that the FAS-106 Letter did not effectively cap Case's obligations with respect to hourly retirees who retired or elected to retire prior to the letter's effective date. It therefore follows that on June 23, 1994, Case was obligated for the full costs of Plaintiffs'[s] health insurance benefits. Pursuant to the unambiguous terms of the Reorganization Agreement and Allocation Agreement, Tenneco and now El Paso assumed those obligations.

Thus, the district court granted summary judgment in favor of CNH America.

B. The Contracts Are Unambiguous and the District Court Properly Granted Summary Judgment to CNH America

On appeal, El Paso argues first that the agreements cannot be "read as conclusively establishing" its liability — that is, El Paso argues that its interpretation of the agreements is a reasonable one that should be tried to a jury. Second, El Paso argues that there is at least a latent ambiguity based on CNH America's conduct over a five-year period, its failure to ever state that El Paso had obligations extending beyond the capped amounts, and its repeated statements acknowledging that El Paso's obligations were limited.

Regarding its first argument, El Paso points to the Delaware Supreme Court's decision in *Eagle Indus.*, 702 A.2d 1228. The court held that:

> Contract terms themselves will be controlling when they establish the parties'[s] common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language. When the provisions in controversy are fairly susceptible of different interpretations or may have two or more different meanings, there is ambiguity.

Id. at 1232. El Paso argues that the contract language is fairly susceptible to different interpretations and that summary judgment was therefore inappropriate. El Paso's argument is essentially that the district court erred by ignoring the language "to the extent that Case is obligated on the Closing Date." This language, El Paso argues, is evidence of the parties's intent to limit liabilities according to their "contemporaneous understanding of what they were." Brief of El Paso at 22. Thus, according to El Paso, any liabilities not contemporaneously allocated were

assumed as contingent obligations by CNH America. For this, El Paso points to section 2.1 of the Benefits Agreement.

On the other hand, CNH America points to the contract language as unambiguously establishing that Tenneco retained all liabilities related to the health care costs whether "foreseen or unforeseen, . . . accrued or unaccrued, known or unknown," that were incurred by JI Case prior to the Reorganization. Moreover, CNH America argues that it is irrelevant that the defendants believed that Tenneco's liability was capped by the FAS-106 Letter. The agreement explicitly allocated the risk of unforeseen liabilities on Tenneco. Regarding the disputed language ("to the extent Case is obligated on the Closing Date"), CNH America argues that it merely creates a clear division between Tenneco's "Retained Liabilities," i.e., those obligations to pre-Reorganization retirees on the closing date, and CNH America's future liabilities, i.e., those obligations to employees who would retire *after* the Closing Date. According to CNH America, the fact that it ended up with more liabilities on the Closing Date than Tenneco suspected does not turn the tide in El Paso's favor because this risk was specifically assumed by Tenneco by the language "unforeseen and unknown liabilities." Finally, CNH America argues that its course of conduct is not relevant because the contract language is unambiguous and "[i]f a contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity." *Eagles Indus.*, 702 A.2d at 1232.

We believe that the district court correctly concluded that the contract is unambiguous and properly granted summary judgment in favor of CNH America. We recognize that the defendants claim that when they signed the FAS-106 Letter,

they intended to cap JI Case's liability in October 1993.[16] When Case and Tenneco signed the reorganization agreements in June 1994, they both anticipated that Case's obligations for retirement benefits were capped by the FAS-106 Letter and that the retirees themselves would be responsible for above-cap costs. Hence, the parties included the language that Tenneco would assume Retained Liabilities "to the extent that Case is obligated on the Reorganization Date . . ." In the absence of other language in the contract, we might have been persuaded to conclude that the parties were agreeing that Tenneco was assuming liability for a specific dollar amount — the below-cap costs. We would have been compelled to conclude as much if the parties had specifically so stated. Nevertheless, the parties were not so specific and we are required to turn to other language and read the document as-an integrated whole. In the parties's definition of Liabilities, we find that Liabilities (and hence Retained Liabilities) includes those liabilities "foreseen or unforeseen . . . known or unknown . . . accrued or unaccrued." Thus, we read the contract unambiguously to allocate to Tenneco Case's Retained Liabilities, including those unforeseen or unknown. The parties's beliefs about the *extent* of the liabilities and their actions pursuant to those beliefs do not demonstrate any ambiguities in the contract language allocating unknown or unforeseen liabilities to El Paso. That is, the only ambiguity in this case is the amount of the liabilities because of the parties's assumption that the FAS-106 Letter capped benefits. The language of the agreements, adopted by sophisticated entities with able counsel, allocated, as most contracts do, the risk of increased liabilities upon one of those parties — El Paso. "Contract language is not ambiguous simply because the parties

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[16] The Union claims, however, that the FAS-106 Letter was signed as a temporary accounting accommodation.

disagree concerning its intended construction." *Eagles Indus.*, 718 A.2d at 1232 n.8.

El Paso does rely heavily on CNH America's course of conduct after the Reorganization — specifically the fact that it never stated that El Paso had liability above the caps, the fact that it paid above cap costs of $25 million in 1998, and its repeated written statements that El Paso's obligations were limited. The extrinsic evidence, however, cannot be considered when contract language is unambiguous. In any event, we also agree with the district court that the extrinsic evidence merely demonstrates the parties's belief that their obligations were capped by the FAS-106 Letter and does not indicate that the indemnification contract language itself was ambiguous.

In sum, Section 7.2.2 provides that Tenneco would assume all postretirement health care benefits for those who retired prior to July 1, 1994 to the extent that JI Case was obligated on the Closing Date. The district court has not abused its discretion in issuing a preliminary injunction on the basis that the benefits were lifetime benefits vested for those who retired prior to October 3, 1993 and, thus, the FAS-106 Letter could not limit those benefits. This means, therefore, that despite the parties's error regarding the extent of liabilities, CNH America is likely to be held liable for the vested lifetime health care benefits for those who retired prior to October 3, 1993 on the Closing Date. Section 7.2.2, however, provides that Tenneco assumed those liabilities. This is reinforced by the parties's definition of "Liabilities" to include those "absolute or contingent, matured or unmatured, liquidated or unliquidated, foreseen or unforeseen . . .accrued or unaccrued, known or unknown, whether having arisen or arising in the future." We are convinced that the contract is unambiguous and therefore affirm the district court's judgment.

Finally, based on this interpretation, the district court did not abuse its discretion in cutting off discovery or in fashioning an equitable remedy under the indemnification provision.

V.

For the foregoing reasons, we AFFIRM the district court's judgment in all respects on each of the four appeals.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTEAD, on behalf of themselves and a similarly situated class,

Plaintiffs,

v.

EL PASO TENNESSEE PIPELINE CO., and CASE CORPORATION, a/k/a CASE POWER EQUIPMENT CORPORATION,

Defendants

Case No. 02-75164

Honorable Patrick J. Duggan

FILED

'03 DEC 31 P2:07

U.S. DIST. COURT CLERK
EAST DIST. MICH
DETROIT

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan, on DEC 31 2003.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiffs brought this lawsuit on behalf of retirees and surviving spouses of retirees, seeking fully funded, lifetime

health care benefits from Defendants. Plaintiffs filed a motion for preliminary injunction on March 21, 2003. For the reasons set forth in an Order issued this date,

IT IS ORDERED, that Plaintiffs' motion for preliminary injunction is **GRANTED;**

IT IS FURTHER ORDERED, that upon the posting of a $50,000 security bond by Plaintiffs, Defendant El Paso Tennessee Pipeline Company shall resume paying the full costs of health insurance benefits for retirees and surviving spouses of retirees who retired from Case prior to October 3, 1993.

This Order shall remain in effect until further of this Court.

s/Patrick J. Duggan
PATRICK J. DUGGAN
UNITED STATES
DISTRICT JUDGE

Copies to:
Roger J. McClow, Esq.
Norman C. Ankers, Esq.
Brian D. Sieve, Esq.
Thomas G. Kienbaum, Esq.
Stephanie Goldstein, Esq.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTEAD, on behalf of themselves and a similarly situated class,

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Defendants

Case No. 02-75164

Honorable Patrick J. Duggan

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U.S. DIST. COURT CLERK
EAST DIST. MICH
DETROIT

OPINION

Plaintiffs, six hourly retirees or surviving spouses of hourly retirees of the J.I. Case Company or the Case Corporation, filed this class action lawsuit seeking fully funded, lifetime retiree health care benefits. Plaintiffs brought their lawsuit on behalf of retirees and surviving spouses of retirees who retired from J.I. Case or the Case Corporation prior to July 1, 1994, the date when Case Corporation was spun-off from its parent corporation, Tenneco, Inc., and reorganized as an independent publicly

owned company. The Court has not yet addressed Plaintiffs' motion for class certification. Presently before the Court is Plaintiffs' motion for preliminary injunction, filed March 21, 2003. A hearing on Plaintiffs' motion was conducted on October 30, 2003.

In their Complaint, Plaintiffs allege two counts against Defendants. In Count I, Plaintiffs allege that Defendants breached labor agreements in violation of Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, by requiring Plaintiffs to contribute substantial premiums to maintain their retiree or surviving spouse health care benefits. In Count II, Plaintiffs allege that Defendants breached their fiduciary duties under the various labor agreements which, constitute employee welfare plans within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*

Defendants are El Paso Tennessee Pipeline Company and Case, LLC.[1] Case was established in 1842 and became a wholly owned subsidiary of Tenneco in 1970. In 1990, J.I. Case changed its name to Case Corporation ("Case").[2] Tenneco continued to operate Case as a wholly owned subsidiary until 1994.

In June 1994, Tenneco underwent a reorganization and decided to sell its agriculture and construction business assets, which consisted of some of Case's assets and some of

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[1] Plaintiffs name the Case Corporation, a/k/a Case Power Equipment Corporation, as a defendant, rather than Case, LLC. However the history of the various entities involved in this lawsuit, as set forth *infra*, indicates that the proper name of the defendant sued is Case, LLC. In fact, Case, LLC is the party which has responded to the Complaint.

[2] Although some Plaintiffs or putative class members may have retired when the company still was named "J.I. Case," for ease of reference the Court will refer to their employer, as well as Case Corporation, as "Case."

Tenneco's assets. Pursuant to a Reorganization Agreement, Tenneco sold these assets to a "newly-formed" corporation, Case Equipment Corporation ("Case Equipment"). On July 1, 1994, Case Equipment conducted an initial public offering ("IPO") of its shares and changed its name to Case Corporation. Then in September 2002, Case Corporation converted to a limited liability company, Case, LLC ("Case LLC").

In 1996, Tenneco merged with a subsidiary of El Paso Natural Gas Company and was renamed El Paso Tennessee Pipeline Company ("El Paso").

I. Factual and Procedural Background- The Relevant Labor Agreements and Other Documents

The International Union, United Automobile, Aerospace and Agricultural Workers of America ("UAW") represented Case employees in collective bargaining. Case and the UAW negotiated a series of collective bargaining agreements ("CBAs"), referred to as Central Agreements.[3] Case and the UAW also negotiated a series of Group Insurance Plans which addressed group insurance benefits for various categories of employees and former employees.[4] Group insurance benefits include, *inter alia*, life insurance benefits, major medical expenses coverage, and prescription drug coverage. The Central Agreements between the UAW and

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[3] Case maintained a number of facilities throughout the mid-western United States. Each location had a separate contract book comprised of the Central Agreement and the relevant Local Supplement. As the Central Agreements are the relevant document in these proceedings, the Court will not discuss the provisions of the Local Supplements.

[4] Prior to 1971, the Group Insurance Plans were contained within the Central Agreements. From 1971 forward, the Group Insurance Plans were separate agreements.

Case from 1971 forward contain the following language with respect to the Group Insurance Plans ("GIPs"): "The group insurance plan agreed to between the parties will run concurrently with this Agreement and is hereby made a part of this Agreement." *See* El Paso App., Vol. I, Ex. 2 A-H.

The 1971 Group Insurance Plan provides that employees retiring under Case's "Pension Plan for Hourly Paid Employees" or "their surviving spouses eligible to receive a spouse's pension under the provisions of that Plan are eligible for" Group Life Insurance, Major Medical Expense Insurance, and the Prescription Drug Plan. *See* Pls.' Exhibits, Vol. II, Ex. E at 26-27. Subsequent GIPs contain identical language. The 1971 Group Insurance Plan required the following "Contribution for Coverage" under the Major Medical Expense Insurance and Prescription Drug Plan:

> (i) For eligible Retired Employees and Surviving Spouses who have enrolled and are age 65 or older, the Company shall pay the full premium cost of the above coverages.
>
> (ii) Effective January 1, 1975, for eligible Retired Employees and Surviving Spouses who have enrolled and are under age 65, the Company shall pay the full premium cost of the above coverages.

See id. In subsequent GIPs, Case agreed to "pay the full premium cost" of health care coverage for eligible retirees and their surviving spouses, regardless of age. *See id.* Over the years, the provisions in the various GIPs addressing retiree health care benefits differed only in that Case agreed to provide additional health care benefits for retirees and their surviving spouses.

During the 1980's and 1990's, some Case employees retired when Case decided to close the facilities at which they worked. Prior to these plant closings, the UAW and Case entered into Plant Shutdown Agreements ("Shutdown

Agreements"). In 1987, before Case closed its Rock Island, Bettendorf, and Terre Haute facilities, the UAW and Case entered into such an agreement. In 1993, the UAW and Case entered into a Shutdown Agreement after Case announced its intention to terminate activities at its Memphis Depot and Wausau plant and to cease most covered operations at its Hinsdale engineering center.

The Shutdown Agreements offered eligible employees three options when their positions were terminated: (A) layoff/master recall, (B) special plant shutdown retirement, or (C) severance pay. Employees selecting Option B received, among other entitlements, special early retirement pension benefits and the post-retirement medical coverage that apply generally to retired Case/UAW employees. The Shutdown Agreements specifically provide that Case representatives will fully explain the various options to eligible employees before they are required to make a selection.

The Shutdown Agreements required the UAW, for itself and on behalf of its members, to release and discharge Case from all claims "other than claims and obligations provided for in [the] Shutdown Agreement." *See, e.g.*, El Paso App., Vol II, Ex. 12 at CASELLC 02177. For example, the release clause in the 1987 Shutdown Agreement provides that the UAW, for itself and the employees who it represents, releases Case from all claims, "except any claim which may be based upon an alleged violation of this Shutdown Agreement . . . and any claims pertaining to *vested residual rights to* pension benefits, life insurance *or hospitalization/medical insurance*." *See* Pls.' Exhibits, Vol. III, Ex. U at 24 (emphasis added).

Faced with increasing financial problems, Case sought to reduce its workforce in the early 1990's. To effectuate that goal, Case and the UAW entered into an "Agreement on Case Voluntary Employment Reduction Program" ("Early

Retirement Incentive Program") in 1991. Some Case employees (including some putative class members) retired in 1991 and 1992 pursuant to this Early Retirement Incentive Program. Case offered employees four options under this program: (1) Special Early Retirement Benefit, (2) Voluntary Termination of Employment Benefit ("VTEP"), (3) Special Layoff with Partial VTEP Benefit, and (4) Special Layoff with Grow-In to Special Early Retirement Benefit. Plaintiffs who chose Special Early Retirement or chose to grow-in to such retirement were entitled to special pension benefits and "the post-retirement medical coverage and Medicare Part B premium payments that apply generally to retired Case/UAW employees."[5] *See* Case Exhibits, Vol. III, Ex. 21 at CASELLC 00244. The Early Retirement Incentive Program provides that employees may be required, as a condition for receiving a benefit, to sign a release or other binding agreement satisfactory to Case. *See id.* at CASELLC 00249.

The 1990 Central Agreement is the last CBA under which Plaintiffs and members of the putative class retired. That agreement was effective from June 2, 1990 through October 2, 1993. However on November 5,1993, Case and the UAW entered into an Extension Agreement which extended the 1990 Central Agreement through February 2, 1995.

With respect to insurance benefits, Section 2 of the Extension Agreement provides that "[e]xcept for pension improvements, all wage schedules, pension benefit and insurance levels would remain in effect at the current schedule rates or levels for the term of the Extension

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[5] Employees selecting "Special Layoff with Grow-In to Special Early Retirement Benefit" became entitled to special early retirement benefits once they attained age 50 and had at least 10 years of service. *See* Case Exhibits, Vol. III, Ex. 21 at CASELLC 00248.

Agreement." *See* Pls.' Exhibits Vol II, Ex. G. In Section 9 of the Extension Agreement, however, Case and the UAW agreed to adopt, effective October 3, 1993, an appended Letter of Agreement (the "FAS-106 Letter") which appears to cap Case's liability for certain health care benefits.[6] The FAS-106 Letter, written by Case's Senior Vice-President to the UAW's Secretary-Treasurer, states:

> This will confirm our understanding that the average per capita annual cost to the Company of providing medical and related benefits under the Case Group Benefit Plan to retired employees and surviving spouses of deceased employees shall not exceed $2,750 for Medicare eligible individuals and $8,500 for those individuals who are not eligible for Medicare. Notwithstanding the foregoing, no covered person shall be required to pay a portion of any excess amount prior to April 1, 1998.

See id., Att. B. The parties dispute the effect of the this letter.

Referring to the FAS-106 Letter as a "Cap Agreement," Defendants contend that Case and the UAW intended it to be a "cost sharing agreement" between Case and its retirees, whereby Case's obligations for retiree and surviving spouse health care benefits would be limited, effective April 1, 1998. Plaintiffs, on the other hand, contend that the UAW and Case only intended the FAS-106 Letter to serve as an accommodation, whereby the UAW agreed to allow Case to

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[6] FAS-106 refers to an accounting standard promulgated by the Financial Accounting Standards Board. Among other things, it required companies to report their post-retirement health care obligations on their financial statements on an accrual basis, rather than on a "pay-as-you-go" basis.

temporarily reduce the FAS-106 accounting figure that it reported on its financial records.[7]

On June 23, 1994, pursuant to Tenneco's sale of its and Case's farm and construction equipment assets to Case Equipment, Tenneco and Case, on the one hand, and Case Equipment,[8] on the other hand, signed a number of agreements, including a Reorganization Agreement and an Employee Benefits and Compensation Allocation Agreement ("Benefits Agreement"). Pursuant to the Reorganization Agreement, the parties sought to reorganize the farm and construction equipment business of Tenneco and its subsidiaries (e.g., Case) so that neither Case Equipment nor any of its subsidiaries would have any interest in any business of Tenneco and its subsidiaries . . . and neither Tenneco nor any of its subsidiaries would have any interest in the farm and construction equipment business except by reason of "(i) their ownership of capital stock of [Case Equipment], the Demand Notes and the Subordinated Debt, (ii) the Retained Assets and (iii) the Retained Liabilities." *See* Case Exhibits, Vol. IV, Ex. 34 at CASELLC07074 (Art. III., Section 3.01). Tenneco assumed, with certain limitations, the Retained Liabilities and agreed to "pay, perform and discharge in due course all of the Retained Liabilities." *See id.* at CASELLC07076 (Art. III, Section 3.02(c)). Included in the Reorganization

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[7] As discussed *infra*, the parties offer conflicting evidence as to whether the UAW and Case intended the FAS-106 Letter to serve as a cap on retiree health care benefits or merely as an accommodation to Case for accounting purposes. Nevertheless, as also discussed *infra*, even if the UAW and Case intended the FAS-106 Letter to serve as a cap, that cap only could effect the rights of employees *retiring after* the effective date of the FAS-106 Letter.

[8] In the Reorganization Agreement, Case Equipment is referred to as "Newco."

Agreement's definition of "Retained Liabilities" are the health care benefits currently in dispute:

> [T]he Case Liabilities for postretirement health and life insurance benefits (to the extent that Case is obligated on the Reorganization Date [June 23, 1994]) of retirees of the Case Business[9] in the United States and current employees of the Case Business in the United States who retire on or before July 1, 1994 and their dependents as more fully described in the Benefits Agreement.

See id. at CASELLC07071. Tenneco agreed to indemnify Case Equipment "from and against any and all Liabilities, and any claims, demands and rights of the [Case Equipment] Indemnitees arising out of or due to . . . the failure or alleged failure of Tenneco or any Tenneco subsidiary to pay . . . any of the Retained Liabilities . . ." *See id.* at CASELLC07081.

The Benefits Agreement further defines Tenneco's and Case Equipment's liabilities with respect to labor, employment, compensation and benefit matters following the reorganization. Pursua nt to Section 7.2.2, and subject to Section 7.4, the Benefits Agreement provides that Tenneco will "retain all liability with respect to postretirement health and life insurance benefits to the extent that Case is obligated on the Closing Date [i.e. the date of the agreement] for United States employees retired prior to the Closing Date and their Dependants" *See* Case Exhibits, Vol. IV, Ex. 37 at CASELLC07110 (Section 7.2.2). Section 7.4 establishes the following limitations on the liabilities Tenneco assumed:

> Tenneco shall not be liable for any postretirement health and life insurance benefit costs which result

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[9] The term "Case Business" refers to the farm and construction business of Tenneco and its subsidiaries. *See id.* at CASELLC07067.

> from any action of [Case Equipment] after the Closing Date which increases such benefits, except to the extent that such benefit increases are required by applicable law. To the extent that Tenneco is not liable for such benefits, [Case Equipment] shall be liable.
>
> Without limiting the generality of the foregoing, it is specifically provided that Tenneco shall not be liable for any increase in the cost of providing postretirement health and life insurance benefits that result from any agreement by [Case Equipment] to increase or otherwise modify the per capita annual cost limits set forth in [the FAS-106 Letter]

See id.

Based on these agreements, Tenneco began paying the full cost of Plaintiffs' health care benefits in July or August 1994. In November 1996, Tenneco sent a letter to its retirees, informing them of its impending merger with El Paso and advising those individuals who retired from Case that their health care benefits would be maintained by El Paso after the merger.

On October 27, 1997, El Paso sent a letter to Plaintiffs informing them that they will be required to contribute $56 per month for health care coverage as of April 1, 1998. El Paso stated that it was authorized to seek this contribution based upon the FAS-106 Letter. El Paso also stated that it reserved "the right to make additional changes, including changes to the cost-sharing features of the plan." *See* Pls. Ex., Vol. I, Ex. D.

Prior to April 1, 1998, as part of their negotiations for a new CBA, the UAW asked Case LLC to pay the $56 per month contribution that El Paso sought from Pre-IPO retirees

and their surviving spouses for their health care coverage.[10] Case LLC contends that it had no legal obligation for these health care benefits, but agreed to pay the retirees' contributions "as a show of goodwill toward the UAW." On October 1, 1998, Case LLC and the UAW entered into an agreement (the "VEBA Agreement")[11] in which both parties agreed "to make deposits of specified amounts in trust to be applied to defray partially the cost of medical benefits in excess of the Cap under El Paso's medical plan for Pre-IPO Retirees and Surviving Spouses . . ." *See* El Paso App., Vol. III, Ex. 41 at UAW1446. Case LLC contends that in the VEBA Agreement, the UAW agreed to fully release it from any further obligations with respect to any costs associated with pre-IPO retiree health care benefits. With respect to that contention, Section 3.3 of the agreement provides in part: "Obligations under this Plan shall be limited to the payment of Benefits provided in Article III of this Plan. Neither Case, the UAW, nor the Administrator shall be responsible by reason of this Plan for payment of any benefits due to covered individuals under the El Paso Medical Plan." *See id.* at UAW1452.

On November 5, 1997,[12] Case LLC sent pre-IPO retirees and their surviving spouses a letter, informing them that the company would be pay their $56 per month health insurance

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[10] While these negotiations and subsequently described conduct occurred before Case Corporation acquired limited liability status, for case of reference the Court will refer to Case Corporation as Case LLC.

[11] The agreement is referred to as the VEBA Agreement because the trust established was a "voluntary employee beneficiary association," pursuant to the requirements for tax exemption under Internal Revenue Code § 501(c)(9). *See* El Paso App., Vol. III, Ex. 40 at 3.

[12] It appears that this date is an error or that Case informed the retirees and surviving spouses of its contribution before the VEBA Agreement was executed.

premium through the end of 1998. Case LLC further wrote: "We expect to be discussing the longer term issues involved in your El Paso plan during our upcoming contract negotiations." *See* Case Exhibits, Vol. IV, Ex. 42.

In the Summer of 2002, when the VEBA funds contributed by Case LLC and the UAW were exhausted, the UAW asked Case LLC and El Paso to make additional contributions to fund the above-cap health insurance costs for pre-IPO retirees. Both entities refused. In August 2002, El Paso sent a letter to pre-IPO retirees and their surviving spouses, informing them that they would have to contribute $290 per month in order to continue receiving their retiree health care benefits. In December, El Paso sent another letter to pre-IPO retirees and their surviving spouses, notifying them that their premiums would increase to $501 per month beginning in January 2003. Plaintiffs filed this lawsuit on December 23, 2002.

II. Issues Presented

Plaintiffs' motion for preliminary injunction raises a number of issues. First, whether Plaintiffs are entitled to fully funded, lifetime health care benefits under the relevant labor agreements. Second, whether El Paso and/or Case LLC are liable for those employee welfare benefits. Finally, if El Paso and Case LLC are liable, what is the extent of each company's liability.

III. Standard for Issuing a Preliminary Injunction

To determine whether to grant Plaintiffs' motion for preliminary injunction, the Court must consider four factors: (1) Plaintiffs' likelihood of success on the merits; (2) whether Plaintiffs will suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest. *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648,653 (6th Cir. 1996)(citing *Performance*

Unlimited v. Questar Publishers, Inc., 52 F.3d 1373, 1381 (6th Cir. 1995)). The Court must balance all four factors. *Id.* "None of these factors, standing alone, is a prerequisite to relief . . ." *Id.* (citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985)).

IV. Plaintiffs' Likelihood of Success on the Merits

Plaintiffs are likely to succeed in this action if the relevant labor agreements between the UAW and Case guaranteed them a vested right to receive fully funded, lifetime health insurance benefits.

A. Applicable Law

A retiree health insurance benefit plan is a welfare benefit plan under ERISA. *Maurer v. Joy Tech., Inc.*, 212 F.3d 907, 914 (6th Cir. 2000)(citing *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1005 (6th Cir. 1993)). Unlike pension plans, welfare benefit plans are not subject to mandatory vesting requirements under ERISA. *Id.* Thus courts have held that "after a CBA expires, an employer generally is free to modify or terminate any retiree medical benefits that the employer provided pursuant to that CBA." *Bittinger v. Tecumseh Prod. Co.*, 83 F. Supp. 2d 851, 857 (E.D. Mich. 1998)(quoting, *Am. Fed'n of Grain Millers v. Int'l Multifoods*, 116 F.3d 976, 979 (2d. Cir. 1997)). The parties to a CBA may agree, however, that the benefits provided for in the CBA will vest and thus survive the termination of the CBA. *Maurer*, 212 F.3d at 914. If the parties intended the benefits to vest for the lifetime of the retirees, the employer's unilateral modification or reduction of those benefits will constitute an LMRA violation. *Id.* (citing *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1298 (6th Cir. 1991)).

The Sixth Circuit Court of Appeal's decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476, 1479 (1983), sets forth the guiding principles for determining whether the parties to a

CBA intended for retiree health insurance benefits to vest. Pursuant to these principles, courts must apply basic rules of contract interpretation to discern the intent of the parties:

> The court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent . . . The court should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties. As in all contracts, the collective bargaining agreement's terms must be construed so as to render none nugatory and avoid illusory promises. Where ambiguities exist, the court may look to other words and phrases in the collective bargaining agreement for guidance. Variations in language used in other durational provisions of the agreement may, for example, provide inferences of intent useful in clarifying a provision whose intended duration is ambiguous. Finally, the court should review the interpretation ultimately derived from its examination of the language, context and other indicia of intent for consistency with federal labor policy.

Id. at 1479-1480 (citations omitted). As the *Yard-Man* court further advised, courts should look to extrinsic evidence to determine the parties' intent only when the terms of the contract are ambiguous. *Id.* at 1480.

Considering the context in which the benefits at issue arose in *Yard-Man*, the Sixth Circuit went on to note that since benefits for retirees are only permissive rather than mandatory subjects of collective bargaining, "it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations." *Id.* at

1482 (citations omitted). Thus, the court noted, there is an inference that retiree benefits will vest:

> [R]etiree benefits are in a sense 'status' benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintained. Thus, when the parties contract for benefits which accrue upon achievement of retiree status, there is an inference that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree.

Id. While other circuits have rejected this inference, the Sixth Circuit continues to rely upon it to interpret CBAs. *See, e.g., Maurer*, 212 F.3d at 915; *see also, Golden v. Kelsey Hayes Co.*, 73 F.3d at 656 (concluding that *Yard-Man* is still good law). The *Maurer* court noted, however, that "although there is an inference that the parties to a CBA intended for retiree benefits to vest, the burden of proof does not shift to the employer, and it is not required that specific anti-vesting language be used before a court can find that the parties did not intend benefits to vest." *Maurer*, 212 F.3d at 915 (citing *UAW v. BVR Liquidating, Inc.*, 190 F.3d 768, 772 (6th Cir. 1999)).

B. Analysis[13]

The Group Insurance Plans provide that employees retiring under Case's pension plan and surviving spouses

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[13] The Shutdown Agreements and Early Retirement Incentive Program provide retirees and their surviving spouses with those health care benefits set forth in the Group Insurance Plans then in effect. *See, e.g.*, Case Exhibits, Vol. III, Ex. 21 at CASELLC00244; Pls.' Exhibits, Vol. III, Ex. U at CASELLC02140. Thus the Court's analysis as to whether Plaintiffs who retired pursuant to Central Agreements and Group Insurance Plans are entitled to vested health care benefits, applies equally to Plaintiffs who retired under these special programs.

eligible to receive a spouse's pension under that plan are eligible for group health insurance benefits. This express language is similar to the following language in the insurance agreement considered in *Golden v. Kelsey-Hayes Company*: "The Company shall contribute the full premium or subscription charge for health care . . . coverage . . . for . . . a retired employee and his eligible dependents *provided such retired employee is eligible for benefits under Article II of the . . . Pension Plan.* 954 F. Supp. 1173, 1186 (E.D. Mich. 1997). The CBA considered in that case contained a similar provision stating that "The Company will pay the full cost of hospital and medical expense coverage of currently enrolled pensioners . . . provided the pensioner is eligible for benefits under the Gunite Pension Plan." *Id.* The district court, determining that these provisions conferred vested benefits upon the retirees, held "that eligibility for retiree health benefits is tied to eligibility for lifetime pension benefits or survivor spouse income." *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410, 415 (E.D. Mich. 1994), *aff'd* 73 F.3d 648 (6th Cir. 1996). The court reasoned that since retirees are eligible to receive pension benefits for life, it therefore appears that the parties intended the employer to provide lifetime health benefits as well.

Further supporting a finding that the parties in this case intended retiree health care benefits to vest, is the fact that the Group Insurance Plans contain no express limitations on the duration of such benefits. In comparison, the plans do set forth express limitations on the duration that other categories of employees are entitled to such benefits. For example, active employees on lay-off or on leave are entitled to continued group insurance benefits according to a specific schedule. *See, e.g., id.*, 1990 Plan at 40-41. Employees on maternity leave are entitled to benefits for up to 12 months following the date their leave of absence commenced. *See id.* As the *Yard-Man* court held, "the inclusion of specific durational limitations in other provisions . . . suggests that

retiree benefits, not so specifically limited, were intended to survive . . ." *Yard-Man*, 716 F.2d at 1481-82; *see also Kelsey-Hayes*, 954 F. Supp. at 1187.

Defendants contend that the express language of the Central Agreements and Summary Plan Descriptions indicate that Plaintiffs' health care benefits did not vest. Defendants focus on the durational clause within the Central Agreements which states that the Group Insurance Plans will run concurrently with the Central Agreements. Relying on this Court's previous decision in *Bittinger v. Tecumseh Prods. Co.*, 83 F. Supp. 2d 851 (E.D. Mich. 1998), and the District Court for the Northern District of Ohio's unpublished decision in *UAW v. Cleveland Gear Corp.*, 1983 WL 2174 (October 20, 1983), Defendants argue that this provision demonstrates that the UAW and Case intended *all* group insurance benefits to cease when the Central Agreements terminated.

A number of courts have held that such general durational provisions only refer to the length of the agreements and not the period of time contemplated for retiree benefits. *Kelsey-Hayes*, 845 F. Supp. at 414. Absent specific limitations on the duration of particular benefits, the courts have held that such provisions say nothing about the duration of those benefits. *Id; see also Yard-Man*, 716 F.2d at 1482. Furthermore, the labor agreements in *Bittinger* and *Cleveland Gear*, are distinguishable from those in the present matter.

In *Cleveland Gear*, the parties' CBA contained a provision limiting the duration of their insurance agreement and insurance plan to the CBA's term. *Cleveland Gear*, 1983 WL 2174, *2. The parties' insurance agreement and insurance plan, however, also contained durational clauses, providing that those agreements continued "until discontinued or superseded either in whole or in the termination or suspension of such Collective Bargaining

Agreement . . ." *Id.* at *3. The court found the three agreements "totally void of any language from which an intent to create lifelong insurance benefits [could] be inferred." *Id.* In comparison, the agreements at issue here expressly contain such language- that is, the GIPs tie retirees' and surviving spouses' eligibility for health care coverage to their eligibility to receive a pension.

For the same reason, *Bittinger* is distinguishable as this Court specifically found in that case that the labor agreement lacked any language linking retiree and surviving spouse eligibility for health care coverage to pension benefits. *Id.* at 862. Defendants contend that *Bittinger* nevertheless is controlling because the insurance plan in that case, like the Summary Plan Descriptions ("SPDs") at issue here, contained provisions in which the employer reserved the right to change the terms of the group insurance plan.[14] In *Bittinger*, the health care plan reserved to the employer the "absolute right, through the collective bargaining process, to amend, modify, or discontinue any or all of the benefits described in the [labor agreement] or the [health care plan] . . ." *Bittinger*, 83 F. Supp. 2d at 858. Here, the SPDs outlining the Group Insurance Plans between 1974 and 1980 include the following reservation language:

> It is hoped that the Group Policies will be continued indefinitely through the years, but your employer necessarily reserves the right, *subject to the applicable provisions of the Labor Agreement* between the Union and the Company, to terminate or change the Plan in the future.

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[14] The Sixth Circuit has held that "statements in a summary plan are binding and if the statements conflict with those in the plan itself, the summary shall govern." *Edwards v. State Farm Mut. Auto Ins. Co.*, 851 F.2d 134, 136 (6th Cir. 1988).

See, e.g., Case LLC Exs, Vol. II, Ex. 7 at 3. Thus Case's right to modify the Group Insurance Plans is expressly limited to the terms of the Central Agreements.

More importantly, any language reserving to the employer the right to change the plan cannot be considered separately from the entire language of the SPDs. Specifically, the section of the SPDs entitled "Provisions Applicable to Retired Employees" provides that "[t]he insurance outlined below will be provided for you if you retire under the Employer's Pension Plan . . . and will be provided for your dependent spouse if, on or prior to the date of your retirement, you elect that your pension be paid to your spouse *after your death* . . ." *See id.* at 32 (emphasis added). As the triggering event for a surviving spouse's receipt of benefits- i.e. the retiree's death- may occur after the CBA's termination, this provision suggests that Case's promise could remain outstanding beyond the term of the CBA. If retiree and surviving spouse insurance benefits terminated at the end of the relevant Central Agreement's term, this promise would be illusory for most surviving spouses. This suggests that Case and the UAW intended such benefits to continue indefinitely, despite Case's retention of some right to change the Group Insurance Plan. *Compare Yard-Man*, 716 F.2d at 1481 (finding that company's promise to pay insurance benefits once retirees reach age 65, when they are entitled to retire at 55, would be illusory if retiree insurance benefits terminated at end of the collective bargaining agreement's three year term).

Furthermore, SPDs after 1980 do not contain language expressly reserving to Case the right to terminate or change the plan, but rather include "Cessation of Benefits" provisions stating that coverage will immediately cease if, *inter alia*, the Plan is cancelled in whole or in part. *See* Case LLC Exhibits, Vol. III, Ex. 18 at CASELLC 07393 & 07404. This distinction from earlier SPDs is important because the

"Cessation of Benefits" further refer to "the Sections of this booklet entitled 'Retirement' and 'Termination of Coverage.'" *See id.* The "Retirement' section docs not contain any "Cessation of Benefits" provision. Rather this section, like the Group Insurance Plan, only ties the continuation of retirement benefits to the retiree's or surviving spouse's eligibility for pension benefits: "Employees who retire under the J.I. Case Pension Plan for Hourly Paid Employees, or their surviving spouses eligible to receive a spouse's pension under the provisions of that plan, *will be eligible* for the benefits described in this section." *See id.* at CASELLC07461. As well, this section further provides: "Except where noted, the benefits and maximums under these *continued* coverages *will be the same as those that were in effect on the day preceding your retirement . . .*" *See id.* (emphasis added).[15]

Even if the parties' intent were not clear based on the express language of the various labor agreements, Plaintiffs present substantial extrinsic evidence to demonstrate that the UAW and Case intended to provide retirees and surviving spouses fully funded, lifetime health insurance benefits. Darla Clark, who was employed by Case at its Terre Haute plant from January 1967 until the plant closed in 1987, met with plant employees applying for retirement. *See* Pls.' Exhibits, Vol. I, Ex. A(6). Ms. Clark states that she told retiring employees "that their medical insurance benefits would continue unchanged for their lifetime, and if an employee's spouse had a survivor pension benefit, the spouse would have the same medical insurance benefits for his or her lifetime." *See id.* ¶ 5.

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[15] Further on, this section provides that "The cost of this coverage is fully paid by the Employer." *See* Case LLC Exhibits, Vol. III, Ex. 19 at CASELLC07463.

Ms. Clark also provides a letter C.J. Devine, Case's Director of Benefits & Practices, sent retirees in 1971, outlining the group medical insurance benefits for which retirees and their surviving spouses were eligible. *See id.* Ex. E to Aff. Explaining their health care benefits in a question and answer format, Mr. Devine states that "Retirees and Surviving Spouses, age 65 or older, are not required to pay a premium, either for themselves or any eligible dependent. Instead the coverage shall be fully paid by the Company." *See id.* In regards to whether a retiree's surviving spouse will be able to keep this coverage, Mr. Devine provides: "If you have elected the Spouse's Optional Form of Pension and your spouse will receive a pension as a result, your spouse will be able to keep this coverage *for the remainder of her lifetime*." *See id.* (emphasis added).

Prior to Case's closing of its Terre Haute plant in 1987, Ms. Clark explained to hourly employees the various benefits to which they would be entitled under the three options in the Plant Shutdown Agreement. In connection with this discussion, Ms. Clark gave employees a "Benefit Information" sheet and a "Disability Pension Worksheet" pre[illegible]ed by Case's Industrial Relations Department in Terre Haute. *See id.* ¶ 9, Ex. A and Ex. D. These documents reflect that hourly employees who choose to retire are entitled to health insurance benefits "continu[ed] unchanged" "[f]or lifetime." *See id.* Ms. Clark also sent medical insurance cards to employees choosing to retire which contain the words "Lifetime" or "Lifetime Coverage." *See id.* ¶¶ 10 & 11, Ex. C. Ms. Clark's letter accompanying these cards states that the cards "reflect your lifetime coverage." *See id.* Ex. B.

Daryl Moore was the Acting Assistant Labor Relations Manager at Case's Bettendorf facility when the facility closed in 1987. *See* Pls.' Exhibits, Vol. I, Ex. A(27) ¶ 6. Prior to the plant closing, Mr. Moore met with hourly

employees at the facility to discuss their options and the benefits provided under these options pursuant to the applicable Shutdown Agreement. According to Mr. Moore, he told "these employees that, in retirement, they would have company paid health care coverage for the rest of their lives and, if they had a spouse who survived them, the spouse would also have fully paid health care coverage for his or her life or until their remarriage." *See id.* ¶ 7. Mr. Moore had the same responsibilities and made the same representations to employees at Case's Rock Island plant prior to its closure in 1987.

Plaintiffs also present through the affidavit of Paula Castillo, the surviving spouse of former Case employee Jose Castillo, a summary of retirement benefits that Case provided Mr. Castillo prior to his retirement. *See* Pls.' Exhibits, Vol. I., Ex. A(5). This summary states that Mr. Castillo and his wife are entitled to full health insurance coverage and that if he pre-deceased his wife, her coverage "would continue as before" and only would terminate if she remarried. *See id.*, Att. Under a section entitled "Spouse's Benefits" the summary Mr. Castillo received further provides: "In the event that you should die before your spouse and a spouse's option was spplied [sic] for, she will receive 55% of your pension for her lifetime along with the insurance which was mentioned previously." According to Ms. Castillo, when she accompanied Mr. Castillo to Case's benefit office prior to his retirement in order to present evidence of their marriage, a benefits representative confirmed that she would be entitled to the benefits set forth in the summary. *See id.*, ¶ 6.

Plaintiffs present affidavits of numerous other retirees and surviving spouses who state that benefit representatives told them that they would receive post-retirement lifetime health insurance coverage, fully paid for by the company. *See,* Pls.' Exhibits, Vol. I, Ex. A. Some of these affiants

provide documentation they or their spouse (where the affiant is a surviving spouse) received from Case. In these documents, Case specifically promises retirees and their surviving spouses fully funded health insurance coverage for their lifetime. *See, e.g., id.*, Exhibits A(17), (20), (25), (26), and (32).

Plaintiffs also provide a transcript of a meeting Karen Hamilton, Case's Benefits Coordinator, held at the company's Racine Plant in 1991 for employees considering the Early Retirement Incentive Program. *See*, Pls.' Exhibits, Vol. I, Ex B. During her presentation, Ms. Hamilton told employees that if they opted into the program, they would "retain all the same group insurance that you have right now if you're retiring with 10 years of service or more." *See id.* at 17. One attendee asked Ms. Hamilton "what happens to the spouse's medical insurance if the retiree passes away?" *See id.* at 25. Ms. Hamilton responded, "As long as the spouse is receiving a pension check, the spouse is entitled to group insurance coverage unless they remarry." *See id.*

Defendants present other extrinsic evidence to show that Case and the UAW did not intend to create specific lifetime health insurance benefits for retirees and their surviving spouses. Specifically, Defendants refer to the FAS-106 Letter, arguing that the UAW's willingness to agree to the cap is "powerful evidence" that it did not believe that Case was obligated to provide fully funded health insurance for the lifetime of its retirees. Defendants also note that during the negotiations between Case and the UAW with respect to the letter, the UAW requested that retiree health insurance benefits be described as "lifetime" benefits, thereby suggesting that there was no previous agreement for such benefits to vest. *See* El Paso App., Vol. II, Ex. 14(F).

Defendants also refer to the following language in the VEBA Agreement between Case LLC and the UAW:

> WHEREAS, El Paso's liability to pay medical benefits to Pre-IPO retirees and their dependents and Surviving Spouses and their dependents is limited according to a formula calculated annually based upon the per capita cost of El Paso's medical plan for Pre-IPO Retirees and Surviving Spouses . . .

See El Paso App., Vol. III, Ex. 40 at UAW1468. Defendants argue that the UAW's willingness to include this language in the agreement demonstrates that it recognized in 1998 that retiree health insurance benefits were terminable and mutable. Finally, Defendants present the testimony of Case's chief union negotiator, Paul Crist, and its former Director of Employee Benefits, Tim Haas, who state that it was the company's understanding that retiree health care benefits lasted only as long as the Central Agreement in effect and thus were not fixed or perpetual. *See* Crist Dep. at 17; Haas Dep.[16]

The Court does not believe that the UAW's and Case's intent when they executed the Central Agreements and Group Insurance Plans from 1971 through 1990 is made

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[16] Defendants also refer to a December 1971 letter Mr. Devine sent to retirees in which he indicates that some surviving spouses will have to pay premiums to obtain health insurance coverage. *See* Case App., Vol. IV, Ex. 50. Mr. Devine in fact does state that some retirees and surviving spouses, those under age 65, will have to pay a premium; however, this is due to the fact that the Central Agreements prior to 1974 only provided full coverage for retirees over age 65. Starting in 1974, Case agreed to pay the entire cost of health care benefits for employees who retired, regardless of their age. Defendants also claim that Case and the UAW agreed to modify health insurance benefits for retirees over the years. Defendants fail to point to any decrease in benefits for retirees; however, there was an increase in their copayment for brand name prescriptions. Courts have found retiree health care benefits vested despite evidence of such changes. *See Helwig v. Kelsey-Hayes*, 857 F. Supp. 1168, 1174 n.2 (E.D. Mich. 1994); *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261, 1266-67 (W.D. Mich. 1990).

clearer by language in agreements executed several years later by the UAW and Case LLC, particularly as Case's representations to its employees prior to 1998 reflect a different intent. Furthermore, the UAW's intent in 1998 is irrelevant if it lacked the authority to reduce health care benefits for already retired employees and their surviving spouses. The Supreme Court has made clear that unions cannot negotiate reductions in retirees' vested benefits without the retirees' consent. *See Chem. Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n. 20, 92 S. Ct. 383 (1971); *see also, Mauer*, 212 F.3d at 918.

In this Court's opinion, the UAW's request to add "lifetime" language to the FAS-106 Letter docs not necessarily mean that the union's representatives believed that the earlier agreements did not provide vested health care benefits. The representatives may have been attempting to more clearly state what they believed earlier agreements provided, particularly where the "agreement" at issue established other limitations on those benefits. Finally, neither Mr. Crist's nor Mr. Haas' testimony is entitled to considerable weight. Mr. Crist is still employed by Case LLC. Mr. Haas serves as a consultant to Case LLC, receiving $20,000 per month in consulting fees from the company.

For the reasons set forth above, the Court finds based on the evidence presently before it that Plaintiffs are likely to succeed on the merits. Plaintiffs, therefore, have met the first requirement for a preliminary injunction.

V. Whether Plaintiffs Will Suffer Irreparable Harm Without the Injunction

Plaintiffs present affidavits from numerous retirees and surviving spouses, most of whom are living on limited, fixed incomes. These affiants state that they lack the funds to

contribute $501 per month to retain their health care coverage.[17] Many of these retirees and surviving spouses suffer serious health care problems and are required to take a number of expensive prescription drugs. Already having lost their health care benefits, some retirees and surviving spouses, such as Edward Ewell, state that they have stopped taking some of their medications, as they cannot afford them. One surviving spouse, Evelyn Corey, has been breaking her prescription pills in half to stretch her supply. Other retirees and surviving spouses have limited their visits to their doctors or have been unable to undergo treatment.

El Paso acknowledges that some Plaintiffs are being harmed, perhaps irreparably. Citing *Adams v. Freedom Forge Corp.*, 204 F.3d 475 (3d. Cir. 2000), however, El Paso argues that such a showing is insufficient to demonstrate class-wide irreparable harm. In *Adams*, the Third Circuit vacated a preliminary injunction granted by the district court because only 11 of the approximately 136 plaintiffs (retirees and surviving spouses) set forth evidence to establish that they were threatened with irreparable harm when their former employer proposed a modification of their health care coverage. Under the employer's proposal in *Adams*, retirees under age 65 would be switched to new coverage and would be required to pay a portion of their premiums (ranging from $30 to $90). Retirees over age 65 would be able to choose between two different plans: (1) a plan with no premium payments, but a $10 co-payment per prescription and a $1250 annual limit for drug prescriptions or (2) a plan with monthly premiums ranging from $20 to $40, a $10 to $20

[17] The UAW is paying to continue health care benefits for a handful of retirees and surviving spouses where the retirees were UAW employees when (or in some cases after) they retired from Case. The Court does not find that these exceptions negate an overall showing of irreparable harm.

co-payment per 30-day supply of prescription drugs, and drug benefits limited to $2500 per year.

The present matter is distinguishable from *Adams* in that Plaintiffs are required to contribute *$501 per month* to maintain *any* of their retiree health care benefits. While Plaintiffs only present the affidavits of 34 retirees and surviving spouses, the Court can surmise that the putative class members overall cannot afford to contribute such an amount until this case is resolved. Unable to afford the $501 premium, Plaintiffs will lose their health care insurance, will not be able to pay for necessary prescription medications, and will not receive all the medical care they need. Reimbursing Plaintiffs for their contributions at the end of the case, therefore, will not afford them relief.

Defendants also argue that Plaintiffs' delay in seeking injunctive relief negates their claim of irreparable harm. While El Paso initially informed retirees and surviving spouses that they would need to pay a premium to maintain their health care coverage in late 1997, Case immediately sent a letter to retirees and surviving spouses indicating that it would pay their premium through 1998.[18] El Paso only informed retirees and surviving spouses in August 2002 that the VEBA Trust had been exhausted and they now would be required to contribute $290 per month. At that time, Plaintiffs and the UAW initiated a lawsuit; however, Plaintiffs and the UAW voluntarily dismissed that suit before an answer was filed when the UAW determined that it should not be named as a plaintiff due to a conflict of interest. In December 2002, El Paso notified retirees and surviving spouses that their contribution was being increased to $501 per month starting January 2003. Plaintiffs

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[18] The contribution El Paso first requested from retirees and surviving spouses additionally was minimal.

immediately filed this lawsuit and, three months later, filed their motion for preliminary injunction. Under these circumstances, Plaintiffs' delay does not negate a showing of irreparable harm, particularly given the information Plaintiffs needed to gather in order to file their motion.

VI. Whether Granting the Injunction Will Cause Substantial Harm to Others

Defendants maintain that they will be irreparably harmed if they are required to pay the full cost of health care benefits for the putative class, consisting of 3700 members based on Plaintiffs' estimate, during the pendency of this lawsuit. The Court recognizes that if Defendants are ultimately successful, they will have suffered substantial damage as a result of the preliminary injunction. However, the Court must balance this potential harm against the potential harm to Plaintiffs if the preliminary injunction is not granted. Defendants have paid the full costs of health care benefits for retirees and their surviving spouses for years prior to August 2002, and in this Court's opinion, the financial impact on Defendants being required to continue to pay these benefits is far less than the financial burden which would be placed on Plaintiffs if their request for a preliminary injunction is denied.

VII. The Impact of the Injunction on the Public Interest

ERISA provides a policy "to protect the interests of participants in employee benefit plans . . . by providing for appropriate remedies, sanctions, and ready access to the Federal Court." 29 U.S.C. § 1001(b). The LMRA favors enforcement of CBAs so as to protect the contractual rights of employees and employers. Plaintiffs contend that the public interest favors issuance of an injunction as ERISA and the LMRA strongly favor the protection of rights guaranteed employees by welfare benefit plans that arc part of CBAs. Defendants argue that issuance of a preliminary injunction

will thwart the public interest in enforcing the terms of CBAs, as they argue that Plaintiffs only can prevail by evading the terms of their CBAs. As the Court concludes that the terms of the relevant labor agreements entitle Plaintiffs to fully funded, lifetime health care benefits, Defendants' argument fails and the Court finds that the public interest will be served by the issuance of an injunction.

VIII. Breadth of the Court's Injunction

Defendants argue that Plaintiffs' request for an injunction is overbroad, as health care benefit levels for retirees and their surviving spouses varied under the Central Agreements. Effective with the 1971 Central Agreement, however, retirees over age 65 have not been required to pay any premium for their retiree health care coverage. The only change over the years in retiree insurance benefits has been the expansion of coverage- for example, the inclusion of vision care coverage and the addition of a hearing aid plan. Plaintiffs merely ask the Court to require Defendants to pay the full cost of the health care benefits they were previously receiving. Defendants only will be required to continue or resume providing the same insurance coverage to Plaintiffs that they were entitled to receive before El Paso required a premium.

Defendants also argue that an injunction should not extend to those employees who retired after October 3, 1993, the date the FAS-106 Letter became effective and thus arguably capped Case's retiree health insurance obligations. At this time, the Court is not convinced that the FAS-106 Letter was merely for accounting purposes and that the UAW and Case therefore did not intend for it to limit Case's obligations to provide future retirees' health care benefits. Thus employees who elected to retire after that date are not entitled to a preliminary injunction. However the Court finds this alleged "cap" ineffective with respect to employees

who chose to retire prior to October 3, even if their retirement went into effect after that date, and with respect to employees who elected a Voluntary Lay-Off option prior to the FAS-106 Letter's effective date but who only "grew into" retirement after that date.

Finally, Defendants contend that those employees who retired pursuant to Shutdown Agreements or Early Retirement Incentive Programs signed release documents barring them from filing claims against Defendants for any benefits. *See, e.g.*, Pls.' Exhibits, Vol. III, Ex. U at CASELLC 02143; Case LLC's Exhibits~ Vol. III, Ex. 22 at EM00764. The releases expressly state, however, that the retirees retained the right to bring any claims arising from those agreements.[19]

IX. Whether El Paso and/or Case LLC is Liable for Plaintiffs' Health Insurance Benefits

Case LLC has filed a cross-claim against El Paso for breach of contract contending that El Paso, as Tenneco's successor, is solely responsible for the cost of Plaintiffs' health care benefits. In its Response to Plaintiffs' motion for preliminary injunction, El Paso argues that it assumed liability for pre-IPO retiree health care subject to negotiated

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[19] For example, the Waiver and Release executed by employees retiring pursuant to the 1993 Shutdown Agreement provides:

> In consideration of said sums and other benefits in this Shutdown Agreement, the undersigned hereby waives, releases, and forever discharges the Company and/or the Union from any and all obligations, claims, causes of action, liabilities, grievance or arbitration claims . . . arising out of or related to facts or events occurring prior to the execution of this waiver and release regarding the employment relationship . . . *except those claims which are based on alleged violations of this Shutdown Agreement* . . .

See Case LLC's Exhibits, Vol. III, Ex. 22 at EM00764-EM00765.

limits- specifically the cap set forth in the FAS-106 Letter. According to El Paso, Case retained liability for retiree health care costs above the cap, the costs at issue in this lawsuit.

Having reviewed the Reorganization Agreement and the Benefits Agreement, the Court finds that El Paso, as Tenneco's successor, is primarily liable for the entire health care costs for pre-IPO retirees and their surviving spouses. Article III, Section 3.02(c) of the Reorganization Agreement and Section 7.2.2 of the Benefits Agreement provide that Tenneco assumes, with certain limitations, the "Retained Liabilities," which specifically are defined to include Case's liabilities for post-retirement health insurance benefits for pre-IPO retirees and their dependents. Contrary to El Paso's claim, nothing in either agreement limits Tenneco's liability for retiree health insurance benefits to the costs below the alleged cap established in the FAS-106 Letter. Section 7.2.4 limits Tenneco's liability for any costs resulting from any action of Case Equipment *after* the date of the Benefits Agreement. As the section further provides as an example, any increase in the cost of benefits that result from any agreement by Case Equipment "to *increase or otherwise modify the per capita annual cost limits* set forth in [the FAS-106 Letter]." The costs of pre-IPO retirees' and surviving spouses' fully funded health care benefits have not arisen as a result of any action by Case Equipment after the Reorganization and Benefits Agreements were executed.

Case, however, has not been released from its liability to provide fully funded, lifetime health insurance benefits to its retirees and their surviving spouses. Thus despite Tenneco's assumption of this liability, Case remains responsible to Plaintiffs for the cost of these benefits. Case LLC argues that it is a distinct corporation from Case and therefore is not liable for these costs. At this time, the Court cannot determine whether the two corporations are in fact distinct or

whether the 1994 reorganization merely left Case as a shell corporation and shifted its business to a "new" company with a temporarily different name.

The Court therefore concludes that El Paso is liable for the full costs of the pre-IPO retirees' and surviving spouses' health insurance benefits. The Court may subsequently conclude that Case LLC also is liable for these costs.[20]

X. Defendants' Request for a Security Bond

Rule 65(c) of the Federal Rules of Civil Procedures provides:

> No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

FED. R. CIV. P. 65(c). It is within the Court's discretion to determine the amount of security to be given by Plaintiff for an injunction. *USACO Coal Co. v. Carbomin Energy Energy, Inc.*, 689 F.2d 94, 100 (6th Cir. 1982). However the Court may require no security at all, as the Sixth Circuit, unlike several other circuits, holds that the requirement of Rule 65(c) is not mandatory. *Roth v. Bank of Commonwealth*, 583 F.2d 527, 538 (6th Cir. 1978)(citing *Urbain v. Knapp Bros. Manuf. Co.*, 217 F.2d 810 (6th Cir. 1954)). As the *Roth* court held "... it was error for the judge, not necessarily to have failed to require a bond in any particular amount, but to have failed to exercise the

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[20] Article V of the Reorganization Agreement contains an indemnification provision, requiring either defendant to indemnify the other defendant for failure to comply with its obligations under the agreement.

discretion required of him by Rule 65(c) by expressly considering the question of requiring a bond." *Id.*

In considering whether to require a plaintiff to give security and, if so, the amount of that security, the Court must balance the interests of the plaintiff and the defendant. As the Sixth Circuit explained in *USACO Coal*, "[t]he purpose of a security deposit . . . is to protect the party injured from damage occasioned by the injunction." *Id.* That purpose, however, must be weighed against the hardship that a bond would impose upon the plaintiff and the diminishing impact such a requirement would have on the relief obtained. Balancing those interests, some courts have required a nominal bond; however, it is this Court's view that a nominal bond is merely a formality which will not provide any meaningful protection to El Paso for the costs and damages occasioned by the preliminary injunction.

Defendants claim that paying fully funded health care benefits for pre-IPO retirees and their surviving spouses will cost in excess of $1.8 million per month. Thus Defendants seek a bond of at least $6 million. Plaintiffs ask the Court to impose a "modest bond," as the district courts required in such similar cases as *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261, 1269 (W.D. Mich. 1990)(requiring $50,000 bond, although defendant claimed monthly cost of retiree insurance benefits to be $90,000), *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410, 416-17 (E.D. Mich. 1994)(requiring $100,000 bond despite defendant's estimated cost of $160,000 per month to provide retiree insurance benefits), and *Helwig v. Kelsey-Hayes Co.*, 857 F. Supp. 1168, 1181 (E.D. Mich. 1994)(requiring $95,000 bond where defendant claimed monthly cost of $150,000 to provide retiree insurance benefits). *See also Hinckley v. Kelsey-Hayes Co.*, 866 F. Supp. 1034, 1046 (E.D. Mich. 1994)(imposing bond of $55,000, although defendant estimated insurance benefits for retirees to cost $87,000 per month); *Fox v. Massey-*

Ferguson, Inc., 172 F.R.D. 653, 681 (E.D. Mich. 1995)(imposing bond of $95,000, although monthly insurance benefits claimed to cost $150,000).

Clearly Plaintiffs and members of the putative class are incapable of providing security in an amount close to either of the figures Defendants cite. As their affidavits indicate, a great number of these individuals depend upon their pension benefits and/or payments from Social Security as their sole source of income. Thus the Court finds that Plaintiffs lack any meaningful funds to post a substantial bond.[21] The Court, however, believes that something more than a "nominal" bond should be required as a condition of Plaintiffs obtaining this injunction because of the cost to Defendants if Defendants ultimately prevail. Therefore, the Court shall order Plaintiffs to post a bond in the amount of $50,000 as a condition of obtaining the preliminary injunctive relief they seek.

An Order consistent with this Opinion shall issue.

s/Patrick J. Duggan
PATRICK J. DUGGAN
UNITED STATES
DISTRICT JUDGE

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[21] If Defendants can identify a source of funds available to Plaintiffs to post a larger bond, they may request a "bond hearing." However such request will not delay the effective date of this preliminary injunction. The preliminary injunction is effective upon Plaintiffs' posting of the required bond.

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTEAD, on behalf of themselves and a similarly situated class,

Plaintiffs,

v.

EL PASO TENNESSEE PIPELINE CO., and CASE CORPORATION, a/k/a CASE POWER EQUIPMENT CORPORATION,

Defendants

Case No. 02-75164

Honorable Patrick J. Duggan

FILED

'04 MAR -9 P4:18

U.S. DIST. COURT CLERK
EAST DIST. MICH
DETROIT

OPINION

Plaintiffs brought this lawsuit on behalf of retirees and surviving spouses of retirees, seeking fully funded, lifetime health care benefits from Defendants. Plaintiffs filed a motion for preliminary injunction on March 21, 2003. On December 31, 2003, this Court granted Plaintiffs' motion. In its Opinion, the Court concluded that Plaintiffs were likely to succeed in demonstrating that individuals who elected to retire prior to October 3, 1993, and their surviving spouses, were entitled to fully funded, lifetime health care benefits.

The Court further concluded that Defendant El Paso Tennessee Pipeline Company ("El Paso") is primarily liable for those benefits.

On January 13, 2004, El Paso filed a motion for reconsideration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and Rule 7.1(g) of the Local Rules for the Eastern District of Michigan. El Paso asks the Court to reconsider its decision with respect to the issue of whether El Paso and/or Defendant Case Corporation ("Case LLC") should pay the costs of Plaintiffs' health care benefits. On the same date, El Paso filed a motion seeking a stay of the Court's December 31, 2003 Order. On January 23, 2004, this Court issued an order staying its December 31 decision pending a resolution of El Paso's motion for reconsideration.[1] The Court now will address the motion for reconsideration.

El Paso asks the Court to reconsider Section IX of its December 31 Opinion, in which the Court concluded that between El Paso and Case LLC, El Paso is primarily liable for the costs of Plaintiffs' health insurance benefits. The Court based its conclusion on the Reorganization Agreement and Employee Benefits and Compensation Agreement ("Benefits Agreement")(collectively the "agreements") executed by Case LLC and El Paso's predecessor, Tenneco, Inc. ("Tenneco") in June 1994. El Paso contends that the Court prematurely resolved the issue of whether El Paso must indemnify Case LLC for Plaintiffs' health insurance costs pursuant to these agreements, without providing El Paso the opportunity to address this issue and without fully

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[1] On January 23, 3004, the Court also sent a letter to the parties informing them that, pursuant to Local Rule 7.1(g), the Court would permit Case LLC and Plaintiffs to respond to El Paso's motion for reconsideration.

resolving Case LLC's liability for those costs as signatory to the relevant collective bargaining agreements ("CBAs").

Local Rule 7.1(g) provides that a motion for reconsideration only should be granted if the movant demonstrates that the Court and the parties have been misled by a palpable defect and that a different disposition of the case must result from a correction of such a palpable defect. E.D. Mich. LR 7.1(g). Rule 60(b) provides, in relevant part, that a court may relieve a party from an order due to "mistake, inadvertence, surprise, or excusable neglect" or "any other reason justifying relief from the operation of the judgment." FED. R. CIV. P. 60(b)(1) and (6). The Court concludes that El Paso is entitled to relief, as the Court erred in overlooking the fact that, as the signatory to the CBAs, Case LLC retained liability for Plaintiffs' health care costs despite El Paso's subsequent assumption of those liabilities in the Reorganization Agreement and Benefits Agreement. Because Case LLC argued in response to Plaintiffs' motion for preliminary injunction and suggests in its response to El Paso's motion for reconsideration that it is not the same entity that signed the CBAs, the Court will address that issue now.

Case LLC argued in response to the motion for preliminary injunction that it is not liable to Plaintiffs because it was not a party to any of the contracts on which Plaintiffs base their claims. According to Case LLC, it did not exist before July 1, 1994, and it is neither the alter ego or successor of the company for whom Plaintiffs or Plaintiffs' spouses worked.

The Supreme Court has held that a successor corporation does not become liable for any of its predecessor's financial or contractual obligations. *See, e.g., NLRB v. Burns Intl Sec. Servs.*, 406 U.S. 272, 279, 286-88, 92 S. Ct. 1571, 1581-83 (1972). In *Burns*, however, the Court noted that a collective bargaining agreement might remain in force "in a variety of

circumstances involving a merger, stock acquisition, reorganization or assets purchase." *Id.* at 291, 92 S. Ct. at 1584. When there is a "mere technical change in the structure or identity of the [old] employing entity, frequently to avoid the effect of the labor laws, without any substantial change in its ownership or management . . . the courts have had little difficulty holding that the successor is in reality the same employer and is subject to all the legal and contractual obligations of the predecessor." *Howard Johnson Co. v. Detroit Local Joint Executive Bd.*, 417 U.S. 210, 259 n. 5, 94 S. Ct. 2236, 2242 n. 5 (1974)(citing *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106, 62 S. Ct. 452, 456 (1942)). Thus where a new employer continues the operations of an old employer and is "merely a disguised continuance of the old employer"— in other words, is the "alter ego" of the old employer— the new employer will be bound to the old employer's labor agreements. *NLRB v. Fullerton Transfer & Storage Ltd., Inc.*, 910 F.2d 331, 336 (6th Cir. 1990)(citing *Southport Petroleum Co.*, 315 U.S. at 106, 62 S. Ct. at 456).

A determination of alter ego status is a question of fact. *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir. 1986). In *Allcoast Transfer*, the Sixth Circuit identified the following facts as relevant in determining whether one company is the alter ego of another company: "whether the two enterprises have substantially identical management, business purpose, operation equipment, customers, supervision and ownership." *Id.* (citations omitted). Contrary to Case LLC's assertion in its response to Plaintiffs' motion for preliminary injunction, the court expressly held in *Allcoast Transfer* that a finding of employer intent to evade its federal labor obligations "is not essential or prerequisite to imposition of alter ego status." *Id.* at 581. Rather, "the essential inquiry under an alter ego analysis is 'whether there was a *bona fide* discontinuance and a true change of ownership . . . or merely a disguised continuance of the old employer.'" *Id.* (quoting *Southport*

Petroleum Co., 315 U.S. at 106, 62 S. Ct. at 456). The Court will apply these considerations to the present case.

As set forth in the Court's Opinion of December 31, 2003, J.I. Case was established in 1842 and became a wholly owned subsidiary of Tenneco in 1970. In 1990, J.I. Case changed its name to Case Corporation. Plaintiffs or Plaintiffs' spouses worked for J.I. Case or Case Corporation and retired pursuant to CBAs between their employer and their union.

In 1994, Tenneco underwent a reorganization in order to divest itself of its agriculture and construction assets. One of Tenneco's first steps in this reorganization was the formation of Case Equipment Corporation ("Case Equipment") as a Delaware Corporation. Case Corporation (hereafter the "old Case Corporation"), Tenneco, and Case Equipment then entered into the Reorganization Agreement and Benefits Agreement whereby Tenneco sold its agriculture and construction assets to Case Equipment. On July 1, 1994, Case Equipment conducted an initial public offering of its shares and changed its name to Case Corporation, in September 2002, the "new" Case Corporation converted to a limited liability company, Case LLC.

The purpose of the reorganization is set forth in the opening paragraphs of the Reorganization Agreement:

> WHEREAS, the Tenneco Board has determined it is appropriate, desirable and in the best interests of Tenneco's stockholders that it make a public offering of equity interest in Tenneco's farm and construction equipment business and that such business be reorganized into one discrete business unit in contemplation of such an offering . . .

See Case LLC's Resp. to Mot. for Preliminary Inj., Exhibits, Vol. IV, Ex. 34 at CASELLC 07066. The Reorganization Agreement was signed for Case Equipment by Jean-Pierre

Rosso, as its President and Chief Executive Officer ("CEO"). *Id.* at CASELLC 07103. At the time, Mr. Rosso also was President and CEO of the old Case Corporation. *See* Case LLC's Resp. to Mot. for Preliminary Inj., Exhibits, Vol. IV, Ex. 49. Prior to the reorganization, Mr. Rosso, as President and CEO of the old Case Corporation, sent a letter to its retirees announcing that "[t]he leadership of Case and Tenneco have announced an action that, when completed, *will make Case* a publicly traded company." *See id.*, Ex. 49.

The Reorganization Agreement was signed for the old Case Corporation by Theodore R. French, as Senior Vice President, Chief Financial Officer ("CFO"), and Treasurer. *See id.*, Ex. 34 at CASELLC 07103. Mr. French held the same positions with Case Equipment; in fact, he signed the Benefits Agreement as Senior Vice President, CFO, and Treasurer of Case Equipment and the old Case Corporation. *See id.*, Ex, 37 at CASELLC 07111.

On June 27, 1994, a few days after the Reorganization Agreement was executed, the old Case Corporation executed a Certificate of Amendment, effective July 1, 1994 at 12:01 a.m., changing its name to Tenneco Equipment Corporation. *See* Pls.' Mot. for Preliminary Inj., Exhibits, Vol. IV, Ex. HH. Effective one minute later, pursuant to a Certificate of Amendment also executed on June 27, Case Equipment changed its name to Case Corporation (hereafter the "new Case Corporation" or "Case LLC"). *See id*, Ex. II. The same individual, acting in the same capacity for the new and old Case Corporations, executed both certificates. *See id.* and Ex. HH.

According to Plaintiffs, those individuals named as officers of the Case Corporation which existed prior to 12:01 a.m., on July 1, 1994 (i.e. the old Case Corporation), were the same individuals named as officers of the Case Corporation which existed one minute later (i.e. the new Case Corporation). *See id.*, Vol. VI, Haas Dep. at 414-22;

Dep. Ex. 36. Plaintiffs also claim that the new Case Corporation not only operated under the same name as the old Case Corporation, but also in the same manufacturing facilities and with the same employees. *See id.*, Haas Dep. at 434-35. As well, the new Case Corporation corresponded with retirees of the old Case Corporation using the same "J.I. Case" letterhead that the old Case Corporation had used for years in corresponding with its retirees. *See id.*, Ex. JJ. The letters from the new Case Corporation were signed by the same employees, working at the same locations, and in the same positions as the letters from the old Case Corporation. *See id.*

Pursuant to the Benefits Agreement, except as otherwise specifically provided within the agreement, the new Case Corporation assumed and agreed to pay "all employment, compensation and benefit liabilities, whether arising prior to or after [the date of the agreement], with respect to all employees and former employees of [each subsidiary of Tenneco which assigned assets used in the farm and construction business to Case Corporation]." *See* Case Resp. to Mot. for Preliminary Inj., Exhibits, Vol. IV, Ex. 37 at CASELLC 07105. The new Case Corporation also assumed all CBAs covering employees of the farm and construction equipment business of the old Case Corporation, including the 1990 CBA pursuant to which many Plaintiffs or Plaintiffs' spouses retired. *See id.* at CASELLC 07106.

Having considered the above facts, the Court concludes that Plaintiffs are likely to succeed in establishing that Case LLC was created pursuant to a reorganization to divest Tenneco of its farm and construction business assets and that it is merely a disguised continuation or alter ego of the company which employed Plaintiffs or Plaintiffs' spouses and which retained the old Case Corporation's labor law obligations. The Court therefore concludes that Plaintiffs

will likely succeed on the merits with respect to their claim for benefits against Case LLC.

The Court is not persuaded at this time that Plaintiffs are likely to succeed on the merits with respect to their claim against El Paso. As El Paso points out in its motion for reconsideration, Plaintiffs' claims allege a failure to adhere to the obligations set forth in the CBAs. Tenneco, El Paso's predecessor, was not a party to the CBAs. Therefore the Court now concludes that Plaintiffs will not likely succeed in establishing that El Paso is obligated *under those agreements* to pay the costs of Plaintiffs' health insurance benefits. *See supra* at 3-4; *see also Serv., Hosp., Nursing Home & Pub. Employees Union v. Commercial Property Servs., Inc.*, 755 F.2d 499, 503 (6th Cir. 1985)(concluding that non-signatory to a collective bargaining agreement who is neither successor nor alter ego of signatory to the agreement cannot be bound by the provisions of the agreement).

The Court may be correct that El Paso assumed Case LLC's obligations to provide Plaintiffs' health care benefits in the Reorganization Agreement and Benefits Agreement. In their complaint and motion for preliminary injunction, however, Plaintiffs do not seek relief from El Paso based on those agreements.[2] The issue of El Paso's liability, therefore, only arises as a result of Case LLC's cross-claim against El Paso for breach of those contracts. As El Paso claims, it was premature for the Court to resolve that claim when addressing Plaintiffs' motion for preliminary injunction.

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[2] El Paso notes in its motion for reconsideration that language within the Reorganization Agreement and Benefits Agreement in fact may deny Plaintiffs a right to seek relief from El Paso based on those agreements. *See* El Paso's Mot. at 3 n.1.

Accordingly, the Court concludes that El Paso's motion for reconsideration should be granted. An Amended Order consistent with this Opinion shall issue.

MAR 09 2004

s/Patrick J. Duggan
PATRICK J. DUGGAN
UNITED STATES
DISTRICT JUDGE

Copies to:
Roger J. McClow, Esq.
Norman C. Ankers, Esq.
Brian D. Sieve, Esq.
Thomas G. Kienbaum, Esq.
Stephanie Goldstein, Esq.

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTEAD, on behalf of themselves and a similarly situated class,

Plaintiffs,

v.

EL PASO TENNESSEE PIPELINE CO., and CASE CORPORATION, a/k/a CASE POWER EQUIPMENT CORPORATION,

Defendants

Case No. 02-75164

Honorable Patrick J. Duggan

FILED

'04 MAR -9 P4:18

U.S. DIST. COURT CLERK
EAST DIST. MICH
DETROIT

AMENDED ORDER GRANTING DEFENDANT EL PASO TENNESSEE PIPELINE CO.'S MOTION TO RECONSIDER [IN PART] THE COURT'S DECEMBER 31 2003 ORDER GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan, on MAR 09 2004

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiffs brought this lawsuit on behalf of retirees and surviving spouses of retirees, seeking fully funded, lifetime health care benefits from Defendants. Plaintiffs filed a motion for preliminary injunction on March 21, 2003.

On December 31, 2003, this Court issued an Opinion and Order granting Plaintiffs' motion for preliminary injunction as to Defendant El Paso Tennessee Pipeline Company ("El Paso"). On January 13, 2004, El Paso filed a motion for reconsideration.

Now therefore, for the reasons set forth in an Opinion issued this date,

IT IS ORDERED, that El Paso Tennessee Pipeline Company's Motion for Reconsideration is **GRANTED** and this Court's Order of December 31, 2003 is hereby **VACATED**;

IT IS FURTHER ORDERED, that upon the posting of a $50,000 security bond by Plaintiffs, Defendant Case Corporation (Case LLC) shall pay the full costs of health insurance benefits for retirees and surviving spouses of retirees who retired from Case prior to October 3, 1993;

IT IS FURTHER ORDERED, that the Court's January 23, 2004 stay of its December 31, 2003 Opinion and Order is hereby **VACATED**.

s/Patrick J. Duggan
PATRICK J. DUGGAN
UNITED STATES
DISTRICT JUDGE

Copies to:
Roger J. McClow, Esq.
Norman C. Ankers, Esq.
Brian D. Sieve, Esq.

Thomas G. Kienbaum, Esq.
Stephanie Goldstein, Esq.

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTEAD, on behalf of themselves and a similarly situated class,

Plaintiffs,

v.

EL PASO TENNESSEE PIPELINE CO., and CASE CORPORATION, a/k/a CASE POWER EQUIPMENT CORPORATION,

Defendants

Case No. 02-75164

Honorable Patrick J. Duggan

FILED

JUN 03 2004

CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

OPINION AND ORDER DENYING CASE LLC'S MOTION FOR RECONSIDERATION

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan, on JUN 03 2004

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiffs brought this lawsuit on behalf of retirees and surviving spouses of retirees, seeking fully funded, lifetime

health care benefits from Defendants. Plaintiffs filed a motion for preliminary injunction on March 21, 2003. On December 31, 2003, this Court granted Plaintiffs' motion. In its Opinion, the Court concluded that Plaintiffs were likely to succeed in demonstrating that individuals who elected to retire prior to October 3, 1993, and their surviving spouses, were entitled to fully funded, lifetime health care benefits. The Court further concluded that Defendant El Paso Tennessee Pipeline Company ("El Paso") was primarily liable for those benefits.

On January 13, 2004, El Paso filed a motion for reconsideration, arguing that Defendant Case Corporation ("Case LLC"), rather than El Paso, should pay the costs of Plaintiffs' health care benefits.[1] In an Opinion issued on March 9, 2004, this Court agreed, concluding that it erred in holding El Paso primarily liable for Plaintiffs' benefits. The Court reasoned that Case LLC was the alter ego of the company that signed the CBAs granting Plaintiffs lifetime, fully funded health care benefits; El Paso, in contrast, was not a signatory to the CBAs and its liability arose, if at all, as a result of its obligations under the 1994 Reorganization Agreement and Benefits Agreement. As Plaintiffs' complaint and motion for preliminary injunction only allege a failure to comply with the obligations set forth in the CBAs, the Court concluded that Plaintiffs were not likely to establish that El Paso is obligated under those labor agreements. The Court noted that the issue of El Paso's liability only arises as a result of Case LLC's cross-claim against El Paso for breach of the Reorganization Agreement and Benefits Agreement and that it was premature for the Court to resolve that claim.

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[1] Effective January 1, 2004, Case LLC changed its name to CNH America LLC. To avoid confusion, however, the Court will continue to refer to this entity as Case LLC.

On March 19, 2004, Case LLC filed a motion for reconsideration, contending that the Court erred in modifying its December 31 decision finding El Paso liable for Plaintiffs' health care benefits.[2] Case LLC argues that the Court erred in refusing to consider the 1994 Reorganization Agreement and Benefits Agreement to decide which defendant should pay the Plaintiffs' health care costs pursuant to the preliminary injunction, as Case LLC argues that El Paso's predecessor, Tenneco, allegedly "retained" liability for those costs in those agreements. Case LLC additionally argues that the Court erred procedurally and substantively in applying the alter ego doctrine to find it liable for those benefits.

For the reasons set forth in the March 9 Opinion, the Court concludes that it did not err by refusing to look to the 1994 Reorganization Agreement and Benefits Agreement to decide whether El Paso or Case LLC was liable for the above-cap costs of Plaintiff's' health care benefits. The Court also concludes that it did not err procedurally or substantively in applying the alter ego doctrine to find Case LLC primarily liable for those costs.

The Court finds no procedural bar to its application of the alter ego doctrine in this case. In their complaint and motion for preliminary injunction, Plaintiff sought relief from Case LLC alleging that Case LLC is the same corporation— merely spun off from Tenneco— as the entity

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[2] Case LLC additionally argues that the Court erred in ordering it to pay "the *full* costs of health insurance benefits," as the issue in this lawsuit is payment of the above cap costs. According to Case LLC, El Paso concedes that it is obligated to pay the below cap costs. In its response in opposition to LLC's motion for reconsideration, ElPaso does not indicate any disagreement with this statement. Therefore, unless and until this Court is persuaded otherwise, the obligation imposed upon Case LLC is to pay benefits above the cap.

that employed Plaintiffs or Plaintiffs' spouses. The alter ego doctrine only became relevant as a result of Case LLC's subsequent argument that it is a separate entity from the Case Corporation that employed Plaintiffs or Plaintiffs' spouses. *See* Case LLC's Resp. at 36. Under these circumstances, the Court finds that it was not barred from considering this theory of liability merely because Plaintiffs only raised it in their reply brief.

For the reasons set forth above, the Court concludes that it and the parties have not been misled by a palpable defect requiring a different disposition of the case. *See* E.D. Mich. LR 7.1(g). Accordingly,

IT IS ORDERED, that Case LLC's motion for reconsideration is **DENIED**.

s/Patrick J. Duggan
PATRICK J. DUGGAN
UNITED STATES
DISTRICT JUDGE

Copies to:
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Brian D. Sieve, Esq.
Thomas G. Kienbaum, Esq.
Stephanie Goldstein, Esq.

APPENDIX G

Nos. 04-1182/1818/1821/2492

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GLADYS YOLTON, ET AL.,

Plaintiffs-Appellees,

v.

EL PASO TENNESSEE PIPELINE COMPANY,

Defendant-Appellant (04-1821/2492),

CASE CORPORATION, NOW KNOWN AS CNH AMERICAN, LLC,

Defendant-Appellant (04-1182/1818).

FILED

MAY 09 2006

LEONARD GREEN, Clerk

ORDER

BEFORE: MARTIN, COLE, and GILMAN, Circuit Judges.

The court having received two petitions for rehearing en banc, and the petitions having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petitions for rehearing have been referred to the original panel.

The panel has further reviewed the petitions for rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the cases. Accordingly, the petitions are denied.

ENTERED BY ORDER OF THE COURT
s/Leonard Green
Leonard Green, Clerk

APPENDIX H

SECTION 301(a) OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a) (2000).

SECTION 502(a)(1)(B) AND (a)(3) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

> A civil action may be brought (1) by a participant or beneficiary . . . (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan; [or]
>
> . . .
>
> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;
>
> . . . .

29 U.S.C. § 1132(a)(1)(B), (a)(3) (2000).